Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

October Term, 2000

CO-STEEL RARITAN

Petitioner,

v.

NEW JERSEY BOARD OF PUBLIC UTILITIES

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of New Jersey

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI VOLUME I

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March 6, 2001

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SUPREME COURT OF NEW JERSEY
A-139/140/147 September Term 1999
49, 690

IN THE MATTER OF
PUBLIC SERVICE ELECTRIC AND
GAS COMPANY'S RATE UNBUNDLING,
STRANDED COSTS, AND RESTRUCTURING
FILINGS

ORDER

DEC 06 2000

IN THE MATTER OF
THE PETITION OF PUBLIC SERVICE
ELECTRIC AND GAS COMPANY FOR A
BONDABLE STRANDED COST RATE ORDER
IN ACCORDANCE WITH CHAPTER 23 OF
THE LAWS OF 1999, etc.

The Supreme Court having carefully considered the record, the briefs of the parties and amici curiae, and the argument of counsel,

And the Court having determined that it is in the public interest to expedite the disposition of the within appeals;

And good cause appearing;

IT IS ORDERED that the judgment of the Appellate Division is affirmed. The opinions of the Court will be filed in due course.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 6th day of December, 2000.

/s/_____
Clerk of the Supreme Court

SUPREME COURT OF NEW JERSEY

No. A-139/140/147 SEPTEMBER TERM 1999

ON APPEAL FROM _____

ON CERTIFICATION TO Appellate Division, Superior Court

IN THE MATTER OF
PUBLIC SERVICE ELECTRIC AND
GAS COMPANY'S RATE UNBUNDLING,
STRANDED COSTS, AND RESTRUCTURING
FILINGS

IN THE MATTER OF
THE PETITION OF PUBLIC SERVICE
ELECTRIC AND GAS COMPANY FOR A
BONDABLE STRANDED COST RATE ORDER
IN ACCORDANCE WITH CHAPTER 23 OF
THE LAWS OF 1999, etc.

DECIDED December 6, 2000

Chief Justice Poritz PRESIDING

CHECKLIST	Affirm	Reverse in Part	
Chief Justice Poritz	X		
Justice Stein		X	
Justice Coleman	X		
Justice Long	X		
Justice Verniero	X		
Justice LaVecchia	____	____	
Justice Zazzali	____	____	
TOTALS	4	1	

SUPREME COURT OF NEW JERSEY

STEPHEN W. TOWNSEND
CLERK

GAIL GRUNDITZ HANEY
DEPUTY CLERK

OFFICE OF THE CLERK
PO BOX 970
TRENTON, NEW JERSEY 08625-0970

DATE: December 6, 2000

TO: All Counsel

FROM: Stephen W. Townsend, Esq.

RE: A-139/140/147-99 IMO Public Service Electric and Gas Company, etc.

I enclose a copy of the Supreme Court Order in the above matter, which is being filed. Please take whatever action is appropriate in light of the Court's ruling.

Thank you.

/s/ Stephen Townsend

SWT/pgw

Enclosure

SUPREME COURT OF NEW JERSEY
A-147 September Term 1999
49,690

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S RATE UNBUNDLING, STRANDED COSTS AND RESTRUCTURING FILINGS,

---

ORDER
FILED
JUL 20 2000

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR A BONDABLE STRANDED COST RATE ORDER IN ACCORDANCE WITH CHAPTER 23 OF THE LAWS 1999, ETC.

The Court having treated the claimed appeal as of right by Co-Steel Raritan as a petition for certification and having granted the petition, in part (See Order in C-1413-99),

And the Court having determined that the parties should file briefs that address the following issues, which briefs are to include counsels' explanation of the economic effect of the BPU's disposition of the enumerated issues and the economic impact that would result from the adoption of the position advocated by Co-Steel Raritan in respect of those issues;

1. Whether the rate reduction mandated by Electric Discount and Energy Competition Act of 1999 (EDECA), N.J.S.A. 48:3-49 to -98, should be applied to all of Co-Steel's usage and not just block 1 HTS usage;

2. Whether Co-Steel is entitled to a 10% reduction from its April 30, 1997, rates rather than a 13.9% reduction

from current rates by August 1, 2002, as ordered by the BPU; and

3. Whether the 1999 rate reduction should be 5% from 1997 rates rather than 5% from the 1999 rates;

And good cause appearing;

IT IS ORDERED that appellant Co-Steel Raritan shall serve and file nine copies of its brief addressing the foregoing issues within thirty days of the filling date of this Order; and it is further

ORDERED that the BPU, the Ratepayer Advocate, and Public Service Electric & Gas shall serve and file responding briefs within thirty days thereafter; and it is further

ORDERED that appellant shall serve and file a reply brief within ten days of the filing of the final respondent's brief; and it is further

ORDERED that the Clerk shall set this matter down for oral argument on Wednesday, November 8, 2000, at 10:00 a.m. in the Supreme Court courtroom, Hughes Justice Complex, Trenton.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 20th day of July, 2000.

/s/ Stephen Townsend
Clerk of the Supreme Court

SUPREME COURT OF NEW JERSEY
A-139/140 September Term 1999
49,690

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S RATE UNBUNDLING, STRANDED COSTS AND RESTRUCTURING FILINGS,

---

ORDER
FILED
JUL 20 2000

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR A BONDABLE STRANDED COST RATE ORDER IN ACCORDANCE WITH CHAPTER 23 OF THE LAWS 1999, ETC.

The Court having granted the petition for Certification filed in the within matter (C-1263-99 and C-1295-99), and the Court having determined that the parties should submit supplemental briefs limited to the following issues, which briefs are to include counsels' explanation of the economic effect of the BPU's disposition of the enumerated issues and the economic impact that would result from the adoption of the position advocated by the Ratepayer Advocate in respect of those issues,

And good cause appearing;

IT IS ORDERED that the parties shall serve and file nine copies of a supplemental brief addressing the following issues, using the specificity of the pertinent point headings and subheadings of the Appellate Division brief of the Division of Ratepayer Advocate as the complete statement of the issues to be covered:

1. Pursuant to the Electric Discount and Energy Restructuring Act, PSE&G's August 1, 1999, rate reduction had to be 5% from April 1997 rate, not from current rates. Thus, the Board's order violates the rate reduction provisions of the Electric Discount and Energy Restructuring Act and must be reversed [Point III];

2. The Board's approval of the use of deferred accounting for PSE&G to achieve the statutory rate reductions violates the Electric Discount and Energy Restructuring Act, which requires rate reductions, not rate deferrals [Point IV];

3. The BPU improperly allowed PSE&G to use the excess electric depreciation reserve funds to achieve rate reductions mandated by the Act [Point V];

4. There was an insufficient evidentiary record developed on the issue of PSE&G's proposed formation of an unregulated affiliate (Genco) and the valuation of the property to be transferred; thus, the Board's order approving the formation of Genco and immediate asset transfer must be reversed because it is arbitrary and capricious, and is not based on credible evidence in the record.

A. The Board's decision on the value of the transferred facilities deprives customers of the appropriate valuation and results in PSE&G'S recovering more stranded costs that it is entitled to, to the detriment of its customers; moreover, the Board based its decision on the Company's owned-generation stranded costs on an out-of-record document .

B. The valuation of the generating assets the BPU approved for the transfer to the genco is inconsistent with the value it approved for the purposes of - calculating stranded costs .

C. The Board failed to properly value all of PSE&G's generating assets, such as fuel contracts, when calculating PSE&G's stranded coats.

D. The Board's unlawful waiver of its Administrative Regulations governing Utility Asset Transfers must be reversed. [Point VII]

5. The Board's failure to conduct hearings in the securitization case violates the New Jersey Administrative Procedure Act, the Restructuring Act, and administrative due process .

A. Because the Securitization case had a direct impact on PSE&G's restructuring cases, including stranded costs recovery and rate reductions, the Board was required to hold a hearing.

B. The Board's adoption of two major revisions to PSE&G's financing petition, without providing the Ratepayer Advocate an opportunity to respond, is contrary to administrative. due process and must be reversed. [[Point VII]

6. The Board's Order fails to require PSE&G to pass through all the cost savings from securitization, as required by the Electric Discount and Energy Restructuring Act.

A. The Board failed to pass through to ratepayers the entire amount of savings due to securitization over its 15 year term. [Point VIII]

and it is further

ORDERED that appellants shall serve and file their briefs within thirty days of the filing date of this Order and respondents shall respond within thirty days thereafter; and it is further

ORDERED that the Clerk shall set this matter down for oral arguments on Wednesday, November 8, 2000, at 10:00 a.m. in the Supreme Court courtroom, Hughes Justice Complex, Trenton.

WITNESS, the Honorable Deborah T, Poritz, Chief Justice, at Trenton, this 20th day of July, 2000.

/s/ Stephen Townsend
Clerk of the Supreme Court

SUPREME COURT OF NEW JERSEY
A-139/140 September Term 1999
49,690

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S RATE UNBUNDLING, STRANDED COSTS AND RESTRUCTURING FILINGS,

---

ORDER
FILED
JUL 14 2000

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR A BONDABLE STRANDED COST RATE ORDER IN ACCORDANCE WITH CHAPTER 23 OF THE LAWS 1999, ETC.

This matter having been presented to the Court by the filing of a notice of appeal by Co-Steel Raritan from the Appellate Division's consolidated judgment in A-643-99T3, A-772-99T3, A-1050-99T3, and A-1108-99T3, and the Court having determined that the appeal does not raise a substantial constitutional question in accordance with R. 2:2-1(a)(1) and the case law interpreting that provision, and the Court, on its own motion, having determined to review the appeal under the standards applicable to a petition for certification;

It is ORDERED that the petition for certification (C-1413-99) is granted, limited to the issues concerning rate reductions and denied as to all other issues raised, including claims of impairment of contract, and it is further;

ORDERED that the motions of Public Service Electric and Gas Company to dismiss (M-1387-99) and for summary affirmance (M-1388-99) are dismissed as moot.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 13th day of July, 2000.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
A-139/140 September Term 1999
49,690

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S RATE UNBUNDLING, STRANDED COSTS AND RESTRUCTURING FILINGS,

---

ORDER
FILED
JUL 14 2000

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR A BONDABLE STRANDED COST RATE ORDER IN ACCORDANCE WITH CHAPTER 23 OF THE LAWS 1999, ETC.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-643-99T3, A-772-99T3, A-1050-99T3, and A-1108-99T3 having been submitted to this Court by the New Jersey Ratepayer Advocate, and the Court having considered the same;

It is ORDERED that the petition for certification is granted.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 13th day of July, 2000.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-643-99T3
A-772-99T3
A-1050-99T3
A-1108-99T3

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S RATE UNBUNDLING, STRANDED COSTS AND RESTRUCTURING FILINGS,

---

APPROVED FOR PUBLICATION
APR 13 2000
APPELLATE DIVISION

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR A BONDABLE STRANDED COST RATE ORDER IN ACCORDANCE WITH CHAPTER 23 OF THE LAWS 1999, ETC.

Argued: March 8, 2000 - Decided:

Before Judges King, Carchman and Lefelt.

On appeal from the New Jersey Board of Public Utilities.

Phyllis J. Kessler argued the cause for appellant New Jersey Business Users in A-643-99T3 and A-1050-99T3 (Kudman, Trachten, Kessler, Tacopina & Newman, attorneys; Ms. Kessler, on the brief).

Philip L. Chabot, Jr. (Wilkinson Barker Knauer) of the Washington, D.C. bar, admitted pro hac vice, argued the

cause for appellant Co-Steel Raritan in A-772-99T3 and A-1108-99T3 (Windels, Marx, Davies & Ives, and Mr. Chabot, Foster DeReitzes and Sandra E. Rizzo, attorneys; Anthony R. Coscia and Amanda F. Shechter, of counsel and on the brief).

John A. Hoffman argued the cause for respondent PSE&G (Wilentz, Goldman & Spitzer, and Francis E. Delany, Jr., and Roger L. Camacho, Corporate Rate Counsel, attorneys; James T. Foran, Anne S. Babineau and Matthew James T. Foran, Anne S. Babineau and Matthew M. Weissman, of counsel and on the brief).

Gregory Eisenstark argued the cause for respondent Division of the Ratepayer Advocate (Blossom A. Peretz, Ratepayer Advocate, attorney; Ms. Peretz, Mr. Eisenstark and Nusha Wyner, Deputy Ratepayer Advocate, and Kurt Lewandowski, Assistant Deputy Ratepayer Advocate, on the brief).

Helene S. Wallenstein, Senior Deputy Attorney General, argued the cause for respondent New Jersey Board of Public Utilities (John J. Farmer, Jr., Attorney General of New Jersey, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Ms. Wallenstein and James Eric Andrews, Deputy Attorney General, on the brief).

James E. McGuire argued the cause for respondent New Jersey Commercial Users in A-643-99T3 (Reed, Smith, Shaw & McClay, attorneys; Mr. McGuire, on the brief).

Gerald W. Conway argued the cause for respondent Jersey Central Power & Light in A-643-99T3 (Berlack, Israels & Liberman, attorneys; Mr. Conway and Marc B. Lasky, of counsel; Pauline Foley and Amy P.K. Motzenbecker, on the brief).

William Harla argued the cause for respondent Independent Energy Producers of N.J. in A-643-99T3

(DeCotiis, Fitzpatrick & Gluck, attorneys; Mr. Harla, on the brief).

Michael J. Mehr argued the cause for respondent Tosco Refining in A-643-99T3 (Waters, McPherson & McNeill, attorneys; Mr. Mehr, on the brief).

LeBoeuf, Lamb, Greene and MacRae, attorneys for respondent Atlantic City Electric Company in A-643-99T3 (Stephen B. Genzer and Mark L. Mucci, of counsel).

Courter, Kobert, Laufer & Cohen, attorneys for respondent Enron Energy Services, Inc. in A-643-99T3 (Murray E. Bevan, of counsel; Richard P. DeAngelis, Jr., on the brief).

Riker, Danzig, Scherer, Hyland & Perretti, attorneys for respondent Rockland Electric in A-643-99T3 (Vincent Sharkey and James C. Meyer, of counsel and on the brief).

McManimon & Scotland, attorneys for respondent Cogen Technologies in A-643-99T3 (John B. Hall, on the brief).

Hagley, Aronchick, Sepal & Pudlin, attorneys for respondent New Energy Ventures in A-643-99T3 (John P. Lavelli, Jr., on the brief).

Potter & Dickson, attorneys for respondent General Motors in A-643-99T3 (R. William Potter and Peter D. Dickson, of counsel).

Cozen & O'Connor, attorneys for respondent South Jersey Gas Co. in A-643-99T3.

Kudman, Trachten, Kessler, Tacopina & Newman, attorneys for respondent New Jersey Business Users in A-1108-99T3 (Phyllis J. Kessler, on the brief).

The opinion of the court was delivered by

KING, P.J.A.D.

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TABLE OF ACRONYMS

BGS	Basic Generation Service
BSCRO	Bondable Stranded Cost Rate Order
EHEP	Experimental Hourly Energy Pricing tariff
HTS	High Tension Service
LEAC	Levelized Energy Adjustment Clause
MTC	Market Transition Charge
NTC	Nonutility Generator Transition Charge
NUG	Nonutility generator
PJM	Pennsylvania-New Jersey-Maryland power pool
SBC	Societal Benefits Charge
TBC	Transition Bond Charge

I

INTRODUCTION

This is a consolidated appeal from two decisions of respondent the Board of Public Utilities (BPU): (1) its Final Decision and Order on the rate unbundling, stranded costs, and restructuring filings of respondent Public Service Electric and Gas Company (PSE&G), and (2) its bondable stranded cost rate order (BSCRO) on PSE&G's petition to finance, or securitize, its recovery-eligible stranded costs-

Co-Steel Raritan (Co-Steel), one of PSE&G's largest commercial customers, appeals from that portion of the Final Decision which ordered payment of stranded cost charges mandated by the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 to - 98, L. 1999, c. 23, effective February 9, 1999 (the Act), despite Co-Steel's special contract with PSE&G. The Division of the Ratepayer Advocate (RA) and New Jersey Business Users (NJBUS), a group of large

industrial and commercial customers, appeal from specific findings in the Final Decision and on procedural due process grounds, contending that they were denied due process when the BPU refused to reopen the record after passage of the Act and BPU decided the securitization issue without holding hearings, among other procedural irregularities. The RA is also a respondent on the issues raised by Co-Steel. Briefs have been filed on behalf of six intervenors in the proceedings before the agency: Jersey Central Power & Light Company (GPU), Rockland Electric Company (RECO), New Jersey Commercial Users (NJCU), Enron Energy Services (Enron), Independent Energy Producers of New Jersey (IEPNJ), and Tosco Refinery Company (Tosco).

The administrative proceedings leading up to these decisions were unusual in many ways: hearings on the unbundling, stranded costs, and restructuring issues were held before an administrative law judge before the Act was passed; the securitization issue invited comments from interested parties but no hearings. Quasi-legislative public hearings were held on deregulation three years before the Act actually was introduced in the Legislature. The BPU's Final Decision relied heavily on a negotiated agreement between PSE&G and seven intervenors which had an opportunity to comment on the agreement. Despite the unusual procedural irregularities, however, we conclude that all parties had ample opportunity to be heard on all aspects of both decisions. We find no denial of due process and no fundamental unfairness. We affirm.

To assist the reader in understanding the terms and acronyms we use we provide a Table of Acronyms.

II

THE HISTORY

From the early 1900s until the Act was passed in 1999, the electric power industry had been composed of vertically-integrated public utility companies. Each company owned

power generation plants, plus transmission, distribution, and customer service facilities. The companies had virtual monopolies over their geographically-defined service territories. The charges for all services—power supply, electric transmission and distribution, and such customer services as connects and disconnects, metering, billing, and account administration—were "bundled" and billed at a single price.

In the late 1970s, electricity rates increased dramatically; by 1985 New Jersey consumers were paying about 50% above the national average for electricity. This situation persisted into the late 1990s. Although such factors as a higher cost of living, higher energy taxes, tighter environmental standards, and a lack of indigenous energy supplies played a part in this rise in rates, a major factor was the high average power production costs in New Jersey. Power production costs were high due to expensive utility-owned nuclear power plants and expensive power purchase agreements with nonutility generators (NUGs).

Competition began in the production aspect of the electric power industry after Congress enacted the Public Utility Regulatory Policies Act of 1978, 16 U.S.C.A. § 2601-2645 (PURPA), which provided incentives to develop nonutility electricity generation. Because of various federal initiatives, by 1997 there were a growing number of power producers and suppliers offering power for sale regionally at competitive prices. In fact, 19% of the electricity consumed by New Jersey customers in 1997 was purchased from independent power producers.

New Jersey's move toward competitive electric power markets in the 1990s paralleled similar regional and national developments. David Pettinari, You Can't Always Get What You Want--Will Two Recent State Court Decisions Tarnish the Political Promise of Electricity Industry Deregulation?, 76 U. Det. Mercy L. Rev. 501, 519 (1999). In 1992 Congress enacted the Energy Policy Act, 42 U.S.C.A. §§ 13201-556, which supported competition and choice in the electricity

marketplace, and in May 1995 the Federal Energy Regulatory Commission adopted rules which paved the way for a competitive wholesale power market. Pennsylvania, New York, Massachusetts, New Hampshire, Rhode Island, Vermont, Maine, and California passed legislation or announced plans that would initiate retail choice for electric customers during 1998 and 1999. Michigan introduced deregulation through an administrative order before legislation on the matter was adopted. Pettinari, at 529-30.

In March 1995, the New Jersey Energy Master Plan Committee, under the leadership of Governor Whitman and Herbert Tate, president of the BPU, released the New Jersey Energy Master Plan Phase I Report, which provided a policy framework for the transition from power industry monopolies to competitive markets. The Master Plan recommended several short-term measures to prepare for the transition to competition, including passage of legislation providing for rate flexibility to help retain Hat risk" customers, and it directed the BPU to investigate changes to the structure of the electric power industry as a means of lowering the cost of electricity in this State. In July 1995, Governor Whitman signed into law P.L. 1995, c. 180, the Rate Flex and Alternative Regulation Act, N.J.S.A. 48:2-21.24 to -30, which mandated that the BPU implement programs which promote a transition to a market-based competitive environment in the energy industry. For example, the Rate Flex Act allowed electric utilities to enter into "off-tariff" or discounted rate agreements with business customers in order to induce them to remain in New Jersey.

By an order of June 1, 1995 the BPU initiated Phase II proceedings to investigate and develop a long-term policy for implementing a competitive marketplace for electricity. The order directed interested parties to participate through comments and reply comments to the BPU between July and October 1995. Four informal working groups composed of representatives of various interest groups and stakeholders were formed to explore the issues related to restructuring the

electric industry. They submitted reports to the BPU in February 1996. The BPU staff prepared a status report based on the four working-group reports and by an order of June 27, 1996 the BPU adopted the status report's recommendations regarding the procedural steps necessary to move toward restructuring.

The BPU adopted a two-step approach to gathering additional information: (1) it ordered formal public hearings and a concurrent public comment period for written comments, and (2) it ordered informal negotiating sessions with representatives of the various interest groups in an attempt to reach a consensus on the salient issues. The status report was distributed for public comment, and public, legislative-type hearings were conducted on July 18, 1996, in Trenton; on July 30, 1996, in Atlantic City; and on August 7 and 8, 1996, in Newark. Written comments were received by August 16, 1996.

In June 1996, negotiating teams were formed; they included representatives from all stakeholders and interest groups: the four New Jersey utilities -- PSE&G, RECO, GPU, and Atlantic Electric Company (Atlantic); consumer groups; environmental interests; energy service companies; independent power producers; power marketers (nonutility companies that buy and then resell electricity); industrial, business, and commercial customers; independent contractors; labor unions in the electric industry; public power associations; local government, and the Director of the RA. The interest groups were permitted to have technical advisers help with the negotiating. Negotiating sessions occurred on a weekly basis from June 27, 1996 through October 25, 1996.

On January 16, 1997 the BPU released "Restructuring the Electric Power industry in New Jersey: Phase II Report Proceeding Proposed Findings and Recommendations Report" (draft report). Three public hearings to receive oral comments on the draft report were held on February 4, 1997, in Newark; on February 5, 1997, in Camden County; and on February 11, 1997, in Trenton. The BPU heard testimony

from forty-two parties and accepted written comments from thirty-nine parties through February 28, 1997. After review of the comments and testimony, the BPU prepared "Restructuring the Electric Power Industry in New Jersey: Findings and Recommendations (Final Report)," which was adopted and released by an order dated April 30, 1997.

The 173-page Final Report's primary recommendation was that by October 1998 retail electric customers in New Jersey should commence to have the ability to choose their electric power supplier, and by July 2000 all New Jersey retail customers should be able to exercise that choice. The Final Report also recommended rate reductions of 5 to 10% while retail competition was phased in. The BPU announced it was looking "forward to working with the State's legislators during 1997 to craft legislation which will provide the foundation and necessary legal authority for the changes" it recommended.

The BPU's April 30, 1997 order adopting the Final Report also directed the four utility monopolies in New Jersey to submit filings in accordance with the guidelines and principles in the Final Report. The Final Report's "Implementation Steps and Schedule" directed each of the four companies to submit three filings—a rate unbundling petition, a stranded cost petition, and a restructuring plan—by July 15, 1997. The BPU expected that several of the issues to be addressed in the filings—standards for fair competition, affiliate relationship standards, analysis of market power, and mechanics for the phase-in of customer choice—would be "pulled out of the individual utility proceedings and reviewed generically. The BPU intended to complete its review of each filing and render a final decision by October 1998 to meet its deadline for the introduction of retail competition by that month. The BPU set forth specific guidelines for the matters to be addressed in the three filings.

By an order of June 25, 1997 the BPU directed its Audit Division to initiate management audits on the four electric utilities and to solicit the assistance of consulting firms to

perform the audit. After issuing a request for proposals, and receiving and reviewing several proposals from independent auditors, the BPU selected Vantage/ICF Consulting (ICF) to perform an audit of PSE&G's filings.

On July 11, 1997 the BPU issued an order which established procedures for the filings: the utility's rate unbundling and stranded cost filings would be transmitted to the Office of Administrative Law (OAL) for hearings and an Initial Decision; the BPU would retain the restructuring plan filings for its own review and, if necessary, for hearings. The BPU intended to issue a Final Decision and Order in all of the matters before the anticipated start date of competition.

On July 15, 1997 PSE&G submitted a single filing containing its rate unbundling, stranded costs, and restructuring proposals, as well as prefiled direct testimony of seven witnesses. The BPU transmitted the unbundling and stranded cost portions of the filing to the OAL, where ALJ Louis McAfoos was assigned to the matter. The BPU retained the restructuring portion of the filing for its own review. The ALJ granted intervenor and participant status to over thirty groups, representing the diverse concerns of utilities, customers, suppliers, labor, and environmental groups. The BPU also granted intervenor and participant status to interest groups.

On September 25, 1997 the BPU issued an order establishing procedures for the restructuring filings, identifying issues with generic implications, and directing the creation of working groups to review the generic issues and submit status reports by January 10, 1998. On January 28, 1998 the BPU established a procedural schedule for review of generic restructuring issues, e.g., divestiture of generation assets, functional separation plans, and mechanics of the phase-in of retail competition.

In November 1997, thirteen intervenors and the RA submitted the prefixed testimony of twenty-five witnesses. PSE&G filed the rebuttal testimony of ten witnesses. ALJ

McAfoos conducted a status conference on January 16, 1998 and on January 24 issued a hearing schedule for the unbundling and stranded cost matters. In late January 1998, the intervenors filed the surrebuttal testimony of eighteen witnesses. On January 29, 1998 the BPU released ICF's audit report on PSE&G's unbundling and stranded cost filings, and on March 5, 1998, it released ICF's report on PSE&G's restructuring filing .

The OAL conducted twenty days of evidentiary hearings on the unbundling and stranded cost matters, from February 9 to March 18, 1998. In April 1998, after the hearings were completed, the parties filed briefs. On the restructuring matter, BPU Commissioner Carmen Armenti held twenty days of hearings between April 27 and May 28, 1998. Thirteen intervenors, the RA, and PSE&G filed the testimony of forty-five witnesses. Representatives of ICF and the three other consulting firms which submitted audit reports on the four utilities' restructuring filings also testified. Briefs on the restructuring issues were filed in June and July 1998.

ALJ McAfoos issued an Initial Decision on the rate unbundling and stranded cost matters on August 14, 1998. The parties filed exceptions and replies to exceptions in October 1998. One matter the ALJ did not resolve was the quantification of stranded costs, although he offered guidance on how the amount should be calculated. After the parties conferred on the issue but could not agree on a stranded cost total, the BPU had TCF prepare a report on the quantification of stranded costs. The BPU relied on the ICF report in its Final Decision.

Meanwhile, in September 1998, a draft of the deregulation bill was introduced in the New Jersey Legislature. The final draft was introduced in both the Assembly and Senate on January 25, 1999. On January 28, 1999 the Assembly passed the bill by a vote of sixty to nine and the Senate passed it by a vote of twenty-seven to six. It was approved on February 9, 1999, the effective date of the Act.

The Act establishes the framework and time schedules for deregulation and restructuring of electric utilities in New Jersey. Statement attached to Assembly Bill A-16, P.L. 1999, c. 23. It mandates a 5% rate reduction by August 1, 1999, the date at which retail competition was to begin, and at least a 10% rate reduction within three years of that date. N.J.S.A. 48:3-52(d) and 3-53(a). The maximum rate reduction must be sustained at least until the end of the fourth year after August 1, 1999 (July 31,. 2003). N.J.S.A. 48:3-52(j). As of August 1, 1999, electric companies had to unbundle their rates and separately identify charges for discrete services, such as generation, distribution, and transmission. N.J.S.A. 48:3-52(a). The Act also establishes "shopping credits" for customers who choose to purchase generation service from an alternative supplier; this reduces their rates and offers an incentive to shop for alternative electric suppliers. N.J.S.A. 48:3-52(b).

Although the Act does not mandate total divestiture, it allows utilities to functionally separate their generation assets and transfer them to an affiliate. N.J.S.A. 48:3-59. The utilities are permitted to recover stranded costs -- the generation plant costs which the utility is at risk of losing when the supply market is opened to competition -- through a limited-duration (up to eight years) nonbypassable market transition charge (MTC). N.J.S.A. 48:3-61(a). Starting on August 1, 1999 the utilities may collect a nonbypassable Societal Benefits Charge (SBC) designed to recover the costs for social programs, nuclear plant decommissioning, demand-side management (DSM) programs, environmental programs, and consumer education programs. N.J.S.A. 48:3-60(a). They are also permitted to impose a nonbypassable transition bond charge (TBC) (for up to fifteen years) in order to recover stranded costs. N.J.S.A. 48:3-62(a). The transition bonds, issued pursuant to a BSCRO, finance eligible stranded costs. N.J.S.A. 48:3-64(a). Financing, or securitizing, stranded costs through the issuance of asset-backed securities mitigates the rate impact of stranded cost recovery because

the interest rates through financing are lower than the utility's historic cost of capital.

On February 11, 1999, consequent upon passage of the Act, the BPU set a schedule to render its decision, but also urged the parties to attempt to negotiate a settlement by March 3, 1999. On March 8, 1999 the Mid-Atlantic Power Supply Association (MAPSA) moved to reopen and supplement the record in the PSESG unbundling and stranded cost proceedings. The RA and NJBUS supported MAPSA's motion; PSE&G opposed it. The BPU denied the motion on March 25, 1999 finding there was ample evidence in the record for its decision and that the entire proceedings had been conducted in contemplation of deregulation.

On March 17, 1999 eight parties submitted a proposed stipulation of settlement (Stipulation I): they were PSE&G, New Jersey Transit Corporation, Tosco, NJCS, Enron, IEPNJ, International Brotherhood of Electrical Workers Local 94, and National Resources Defense Council. On March 29, 1999 six other parties submitted an alternative settlement proposal (Stipulation II): they were the RA, NJBUS, MAPSA, New Energy Ventures, New Jersey Industrial Customers Group, and New Jersey Public Interest Intervenors (excluding the Natural Resources Defense Council). In April 1998 both groups of negotiators submitted comments on each other's stipulations.

The BPU held a public agenda meeting to consider the proposals and on April 21, 1999 issued a summary order, finding Stipulation I more financially prudent and consistent with the Act's requirements than Stipulation II. On August 24, 1999 the BPU issued its Final Decision and Order, which supplemented and elaborated on the April summary order. It announced that PSE&G was permitted to securitize up to $2.4 billion of its stranded costs.

On June 8, 1999, after the BPU issued its summary order but before it issued its Final Decision, PSE&G filed a petition with the BPU, seeking a BSCRO to securitize $2.4 billion in

stranded costs. On August 11, 1999 the RA filed comments, raising thirteen arguments in opposition to PSE&G's financing petition and requesting that evidentiary hearings be held on the issue. On August 24, 1999 the BPU held a public meeting at which it rendered the decision that no hearings were required. On September 17, 1999 the BPU denied Co-Steel's and NJBUS's motions to intervene in the securitization proceeding and issued a BSCRO approving PSE&G's securitization.

Co-Steel and NJBUS have filed separate appeals from the Final Decision and Order in the unbundling, stranded costs, and restructuring matter and from the BSCRO. (A-1108-99T3 and A-772-99T3 are Co-Steel's appeals from the restructuring and financing matters; A-643-99T3 and A-1108-99T3 are NJBUS's appeals from those matters.) We consolidated the four appeals. Although the RA considered itself a respondent and did not file a notice of appeal, we directed it to file an appellant's brief on all matters on which it opposed the BPU's orders. We granted PSE&G's motion to accelerate the appeal.

III

CO-STEEL'S CONTRACT IMPAIRMENT AND RELATED CLAIMS

We first consider Co-Steel's contention that the BPU's order, imposing stranded cost charges on it, was an unconstitutional impairment of its special ten-year contract with PSE&G from 1995 through 2005. Co-Steel claims that the order allows PSE&G to impose an "exit fee" on Co-Steel after the contract term expires, which in effect increases the agreed price of electricity during the contract term. In addition to constitutional considerations, Co-Steel says that principles of equity and estoppel should preclude PSE&G from imposing stranded cost charges because it relied on the contract in deciding to remain in New Jersey rather than moving its operations to Kentucky, where power costs were

less expensive, and also by investing $37 million in the Perth Amboy plant. In the alternative, Co-Steel argues that even if we allow imposition of stranded cost charges, the BPU incorrectly applied the Act to its contract in three ways: (1) the BPU should have applied the rate reduction to all of its electricity consumption rather than to "block 1" only; (2) the rate reduction scheduled for August 2002 should reduce rates by 10% from their 1997 level not 13.9% from their 1999 level; and (3) the August 1999 rate reduction should reduce rates by 5% from their 1997, not 1999, level, a point which all appellants raise and which we consider separately.

The United States Constitution, art. I, § 10, provides that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ." Our New Jersey Constitution, art. IV, § 7, ¶ 3, has a parallel prohibition. Despite the difference in language, the federal and state Contract Clauses are applied coextensively and provide the same protection. Fidelity Union Trust Co. v. New Jersey Highway Auth., 85 N.J. 277, 299-300, appeal dismissed, 454 U.S. 804, 102 S. Ct. 76, 70 L. Ed. 2d 73 (1981).

The prohibition against impairment of contracts under the federal and state constitutions is not absolute. It "must be accommodated to the inherent police power of the states to safeguard the vital interests of their residents." In re Recycling & Salvage Corp. 246 N.J. Super. 79, 100 (App. Div. 1991). "The contract clause does not deprive the states of their power to adopt general regulatory measures even if those regulatory measures result in the impairment or destruction of private contracts." Ibid.

Our federal and state courts apply a three-prong test to determine whether legislation has unconstitutionally impaired a contract: they ask (1) has it substantially impaired a contractual relationship? (2) if so, does it have a significant and legitimate public purpose? and (3) is it based on reasonable conditions and reasonably related to appropriate governmental objectives? State Farm Mut. Auto. Ins. Co. v. State, 124 N.J. 32, 64 (1991).

In determining whether a contract impairment is substantial, courts consider whether the industry has been regulated in the past. Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242 n.13, 98 S. Ct. 2716, 2721 n.13, 57 L. Ed. 2d 727, 735 n.13 (1978) ("When he purchased into an enterprise already regulated in the particular to which he now objects," he purchased subject to further legislation upon the same topic). On this first prong of the test, courts may also consider whether one of the parties reasonably relied on the contractual terms and whether the legislation was an unexpected modification of those terms. Nieves v. Hess Oil Virgin Islands Corp., 819 F.2d 1237, 1247 (3d Cir.), cert. denied, 484 U.S. 963,108 S. Ct. 452, 98 L.Ed. 2d 392 (1987). Fon example, in Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 416, 103 S. Ct. 697, 707, 74 L. Ed. 2d 569, 583-84 (1983), the Court said that the natural gas contracts at issue "expressly recognize the existence of extensive regulation by providing that any contractual terms are subject to relevant present and future state and federal law," and could be interpreted "to incorporate all future state price regulation. . . ." At the very least, the Court said, the provision suggested that the gas company "knew its contractual rights were subject to alteration by state price regulation." Id. at 416, 103 S. Ct. at 707, 74 L. Ed. 2d at 584. As to the second and third prongs of the test, the legitimacy and reasonableness of legislation, the courts generally defer to legislative judgment, unless the State itself is a contracting party. Id. at 412-13, 103 S. Ct. at 705, 74 L. Ed. 2d at 581 (holding that a state statute regulating the price of natural gas did not violate the contract clause even if it did impair an energy company's contract with a public utility).

Here, respondents BPU, PSE&G, and RA counter Co-Steel's contract impairment argument by asserting that Co-Steel fails to satisfy the first prong of the test because the Act and the BPU restructuring order did not impair its contract; in fact, the end result was lower rates than provided for under the contract. The ten-year service agreement between Co-

Steel and PSB&G was approved by the BPU on November 17, 1995, with the new rate effective retroactive to April 1, 1995. On July 24, 1995 a stipulation signed by the parties, the Attorney General (for the BPU), and the RA modified the agreement, specifically with reference to the Experimental Hourly Energy Pricing Tariff (EHEP) service offered to Co-Steel. The stipulation also refers to a July 1995 agreement with the New Jersey Treasury for a lower tax rate on the energy purchased under the contract.

The agreement between Co-Steel and PSE&G articulates the motivations of the parties: Co-Steel would forego closing its steel plant in Perth Amboy and moving its operations out of state, and would invest at least $37 million in improvements to its Perth Amboy plant between 1995 and 1999 in consideration for the special discounted pricing that PSE&G offered.

Under the agreement, electric services to Co-Steel would be priced in two blocks: the first 13 million kWh (block 1), which accounts for about one-third of Co-Steel's annual electricity consumption, would be billed monthly "at prices, terms, and conditions identical to PSE&G's then effective Rate Schedule High Tension Service (HTS)," that is, whatever the HTS tariff rate was at a particular time. Anything over 13 million kWh (block 2) would be billed at PSE&G's "marginal energy cost" (the cost of the electric utilities that make up the "PJM" power pool—Pennsylvania, New Jersey, Maryland, and Delaware). Block 2 usage is governed by the EHEP service agreement, under which Co-Steel, the only customer under this service, would receive a discounted rate, with the cost of energy "vary[ing] hourly with changes in Public Service's marginal energy cost." According to Vincent Dimiceli, controller of Co-Steel, the effect of this "interruptible service" contract was to reduce its cost of electricity from an average of 5.9 cents per kWh to an average of 4.2 cents per kWh. The contract is silent as to what might occur when the contract term expired in 2005.

In the BPU order of August 24, 1999 the Commissioner ruled that, under the Act, N.J.S.A. 48:3-60, -61, and -67, HTS customers, along with all other electric public utility customers (except eligible on-site generator customers, N.J.S.A. 48:3-77), were subject to nonbypassable stranded cost charges (MTC, TBC, and SBC). At the same time, HTS customers would also receive rate reductions totaling 13.9% by August 1, 2002, and those reductions were, in part, due to securitization of the stranded cost charges. However, since Co-Steel's block 2 usage was governed by the special EHEP contract, it would be unaffected by the BPU order. The BPU refused to exempt Co-Steel from imposition of stranded cost charges, which could continue up to fifteen years after transition bonds are issued, well beyond the expiration of Co-Steel's contract.

According to Co-Steel, before the contract went into effect, its annual electric bill was $24 million, and under the contract the annual bill was lowered to $18 million. Co-Steel admits that, despite the imposition of surcharges on its HTS consumption, its block 1 costs would decrease under the BPU order due to the rate reductions applied to HTS customers. It also acknowledges that its block 2 rates are unaffected by the Act. Thus, the overall effect of the order will be "either neutral or . . . a slight decrease." However, Co-Steel believes that after the contract expires, when the mandatory rate reductions are no longer in effect, the transition charges authorized by the BPU order will allow PSE&G to collect between $4.5 and $6 million per year for ten or more years beyond the contract term. N.J.S.A. 48:3-61(i) (MTC charges may be imposed for up to eight years); N.J.S.A. 48:3-62(d)(1) (TBC charges may be imposed for up to fifteen years).

Thus, Co-Steel appears to admit that during the term of the contract the Act, as applied by the BPU order, will not impair its contract, but will in fact enhance it. Not until after the contract expires, will Co-Steel have considerable charges which it allegedly did not anticipate when negotiating the terms of the contract.

We conclude that the contract impairment argument is undermined by Co-Steel's failure to include contingencies for post-contract charges even though its own controller, Dimiceli, acknowledged that at the time he was negotiating the contract, in the fall of 1994, he was "generally aware that electric industry deregulation was somewhere on the horizon and that it might occur to one degree or another in the succeeding few years"; he believed that "there was a good chance [that competition] would arrive sometime during the ten-year term of our contract."

Co-Steel's argument is also undermined by two provisions of the agreement which allow for unilateral changes in its terms:

> 7. Taxes, Assessments or Other Charges: In the event that PSE&G incurs any taxes, assess-ments of or other charges in connection with the services to be provided hereunder, which were not applicable at the time of entering into this Agreement, including any increase in the Gross Receipts and Franchise Unit Tax, such taxes, assessments or other charges shall be passed through to Raritan as an increase in PSE&G's costs of providing service hereunder . . . .
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> *****
>
> 9. Laws, Regulations, Orders, Approvals and Permits:
>
> This Agreement is made subject to present and future local, state and federal laws and to the regulations or orders of any local, state or federal regulatory authority having jurisdiction over the matters set forth herein . . . .

As in Energy Reserves, 459 U.S. at 416, 103 S. Ct. at 707, 74 L. Ed. 2d at 584, the express language of paragraph nine of the agreement suggests that Co-Steel knew that its contractual rights were subject to alteration by state legislation. Thus,

Co-Steel cannot have reasonably relied on the immutability of the agreement.

Co-Steel tries to distinguish the types of charges allowed under paragraph seven of the agreement and those imposed by the Act. It says that whereas paragraph seven allows PSE&G to "pass through" to Co-Steel any "taxes, assessments of or other charges [incurred by PSE&G] in connection with the services to be provided . . . as an increase in PSEG's costs of providing service," stranded cost charges are "amounts collected by PSE&G for the benefit of its shareholders" and incurred before the contract was negotiated; thus, they do not represent an increase in the cost of providing service during the term of the contract. Although such semantic distinctions may be true and have a certain allure, they do not alter the fact that the Legislature has mandated that stranded cost charges be passed along to customers as a cost of service. N.J.S.A. 48:3-60, -61, and -67. Thus, such charges are covered under the plain language of paragraph seven.

We conclude that Co-Steel's contract has not been substantially impaired but even if Co-Steel could satisfy this first prong of the test, it fails the second and third prongs. Co-Steel concedes that there is a legitimate purpose behind the collection of stranded costs by utilities and recognizes the legislative policy stated in the Act: to "[p]rovide for a smooth transition from a regulated to a competitive power supply marketplace" and to "maintain the financial integrity of the electric public utility through the transition to competition. . . ." N.J.S.A. 48:3-50(a)(12) and (c)(4).

However, Co-Steel contends that the imposition of stranded cost charges on it was not reasonable, and that we should not defer to the BPU's judgment because the State is a party to the contract. Although the BPU approved the contract and the Attorney General signed the 1995 stipulation on modifications to the contract, the real parties to the contract are PSE&G and Co-Steel. Deference must be accorded the legislative judgment and BPU's judgment concerning interpretation of the Act. Energy Reserves, 459

U.S. at 412-13, 103 S. Ct. at 705, 74 L. Ed. 2d at 581; New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 575 (1978).

Co-Steel argues that the stranded cost charges are a devastating burden for it but because they represent only a tiny fraction of the total to be collected by PSE&G, their loss would jeopardize neither PSE&G nor electric utility competition. The BPU responds by saying there is no justification for treating Co-Steel differently from all other customers: PSE&G will continue to provide distribution, transmission, and customer services after expiration of the contract, and Co-Steel should be obligated to pay its share of providing those services and its share of the stranded costs charges, which but for the Act would have been recovered in PSE&G's rates on a continuing basis. We also recognize that the nonbypassable stranded cost charges are not exit fees assessed only to customers who leave the utility but rather are imposed on all customers, whether or not they choose another energy supplier.

We think it unreasonable to treat Co-Steel differently from other PSE&G customers when its contract does not specifically call for any special post-contract treatment. It now is receiving the benefit of reduced rates through the contract, certain tax relief from the State, and the rate reductions resulting from the Act. When the contract expires, if it remains in New Jersey, it may also receive benefits from competition among electricity suppliers. We conclude it reasonable that Co-Steel bear its share of the stranded cost charges that are an integral part of the legislative deregulation scheme.

Co-Steel also argues that equitable principles should preclude imposition of these charges since it detrimentally relied on its contract when deciding to remain in New Jersey and invested $37 million in improvements to its Perth Amboy plant. But Co-Steel was aware that deregulation was literally "around the corner" and would most likely occur during the term of the contract. In fact, according to Dimiceli, Co-Steel

was looking forward to "tak[ing] advantage of open competition after the contract expired." He saw the contract as a "trade-off": Co-Steel "would lock into a favorable electric rate for ten years, but in exchange we would be giving up the opportunity to participate in any competitive market for electricity that might develop before the end of our contract term." Co-Steel appears to want a "double bite," the favorable contract rate and the advantages of competition, but none of the associated costs of deregulation. The equities do not favor Co-Steel under these circumstances. Their reliance was not so much detrimental as it was shrewd.

Co-Steel's alternative argument addresses three specific aspects of the BPU order it contends were error. First, Co-Steel asserts that the rate reduction mandated by the Act should be applied to all of its usage, not just block 1 HTS usage because (1) it is unfair to impose on it the full burden of stranded cost charges but allow it only half the rate decrease granted other customers, and (2) N.J.S.A. 48:3-52(d)(1) mandates rate reductions for each "customer class," a category into which Co-Steel must, by logic, fall.

N.J.S.A. 4813-52(d)(1) provides:

> During a term to be fixed by the board, each electric public utility shall reduce its aggregate level of rates for each customer class, including any surcharges assessed pursuant to this act, by a percentage to be approved by the board, which shall be at least 10 percent relative to the aggregate level of bundled rates in effect as of April 30, 1997, subject to the provisions of paragraph (2) of this subsection.

The Act does not define "customer class."

In its August 24, 1999 Final Decision, the BPU determined that the rate reduction and the stranded cost charges applied to Co-Steel's HTS block 1 usage, but that the Act would not affect its block 2 usage, which was governed

by the EHEP contract. In its October 19, 1999 denial of Co-Steel's motion for reconsideration, the BPU clarified that the MTC, TBC, and SBC stranded cost charges would not be imposed on the block 2 discounted rate, and that the discounted rate would not be affected by the Act. It was only the HTS tariff usage (block 1) that would be affected by both the stranded cost charges and the rate reductions mandated by the Act, because that tariff was not "designed . . . to insulate customers from future additional charges relating to the provision of service." The BPU's decision was grounded solidly on holding the parties to the terms of Co-Steel's contract with PSE&G.

As to the definition of "customer class," the BPU interpreted it to mean "customers served under fixed tariffs, not customers that have made separate arrangements to receive service at heavily discounted rates." Although Co-Steel makes a strong argument that it should be considered as part of a customer class, it ignores the fact that it bargained for a special rate that literally put it into a class by itself: it is the only PSE&G customer receiving a discounted rate under an EHEP service agreement.

The interpretation of "customer class" announced by the BPU, the administrative agency charged with the enforcement of the Act, should be given great weight by the court. New Jersey Guild of Hearing Aid Dispensers, 75 N.J. at 575; In re South Jersey Gas Co., 226 N.J. Super. 327, 333 (App. Div. 1988), aff'd, 116 N.J. 251 (1989). However, even without reaching the validity of that interpretation, the underlying principle of enforcing a contract as written was a valid basis for the BPU's decision.

Co-Steel next argues that, under N.J.S.A. 48:3-52(d)(1)[1], it is entitled to a 10% reduction from its April 30, 1997, rates

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[1] N.J.S.A. 48:3-52(d)(1) and (2) states:

> d. (1) During a term to be fixed by the board, each electric public utility shall reduce its aggregate level of rates for each customer

rather than a 13.9% reduction from current rates by August 1, 2002 as ordered by the BPU, because the BPU's decision was premised on the 3.9% increase experienced by most PSE&G customers in 1998, whereas Co-Steel's increase during that period was 9%.

N.J.S.A. 48:3-52(d)(1), quoted above, mandates a rate reduction that is at least 10% below the April 30, 1997 rates, to be implemented "[d]uring a term to be fixed by the board." The following subsection of the statute allows the BPU to "set a term for an electric public utility to phase in a rate reduction of ten percent or more during the first 36 months after the starting date for the implementation of retail choice" (August 1, 1999) and requires that the rate reduction on August 1, 1999, be at least 5%. N.J.S.A. 48:3-52(d)(2). The statute allows the BPU to order a rate reduction greater than 10% "if it determines that such reductions are necessary in order to achieve just and reasonable rates." N.J.S.A. 48:3-52(e).

In its Final Decision, the BPU ordered cumulative rate reductions that would equal 5% effective August 1, 1999, 7% "on or about" January 1, 2000, 9% effective August 1, 2001 and 13.9% effective August 1, 2002. The BPU explained this decision in addressing Co-Steel's arguments in its motion for

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class, including any surcharges assessed pursuant to this act, by a percentage to be approved by the board, which shall be at least 10 percent relative to the aggregate level of bundled rates in effect as of April 30, 1997, subject to the provisions of paragraph (2) of this subsection.

(2) The board may set a term for an electric public utility to phase in a rate reduction fo ten percent or more during the first 36 months afte the starting date for the implementation of retail choice as provided in subsection a. of section 5 [N.J.S.A. 48:3-53(a)] of this act; provided, however, that, on the starting date for the implementation of retail choice as provided in subsection a. of section 5 of this act, each electric public utility shall reduce its aggregate level of rates for each customer class, including any surcharges assessed pursuant to this act, by no less than five percent.

reconsideration. It said that whether or not Co-Steel should receive only a 13.9% reduction on August 1, 2002,

> will depend to a large extent on the particular tariff design to be developed for Co-Steel as an EHEP customer in 2002. Co-Steel's argument is based on the fact that because DSAF charges are recovered on a volumetric basis, its DSAF increases in 1998 were higher than those of other customers. Co-Steel thus asserts that it should experience, due to those earlier larger DSAF increases, a greater reduction in rates than those customers that may have experienced a DSAF increase closer to the overall average of 3.9 percent. The Board agrees that this issue should be looked into at the time the appropriate tariff designs covering these future rate reductions are completed and approved by the Board. Therefore, before the Board gives its final approval to rate reduction to be effective on August 1, 2002, it will consider the appropriate rate design for all of its customers including Co-Steel. In doing so, the Board will be considering any arguments Co-Steel may wish to present at that time.
>
> [(emphasis added).]

Thus, the BPU acknowledges that Co-Steel's 1998 increases were greater than those of the average PSE&G customer, which may indicate the need for a reduction greater than 13.9% in 2002. The BPU merely asserts, as does PSE&G, that the issue is not ripe for adjudication at this point.

N.J.S.A. 48:3-52(d) gives the BPU the discretion to determine the amount of the rate reductions and the term during which they are phased in, as long as the August 1999 reduction is at least 5%, the total rate reduction is at least 10% over the 1997 level, and the phase-in period is accomplished within three years of August 1999. The BPU has acknowledged that for Co-Steel this may mean a greater than 13.9% increase by 2002, and that it will entertain Co-Steel's

arguments on the issue before ordering final approval on the 2002 increase. We see no dispute to resolve at this point.

Finally, Co-Steel contends that the 1999 rate reduction should be 5% from 1997 rates rather than 5% from 1999 rates. Appellants RA and NJBUS join in this argument. As discussed, N.J.S.A. 48:3-52(d)(1) mandates a rate reduction of atleast10% "relative to the aggregate level of bundled rates in effect as of April 30, 1997. . . ." The next subsection, N.J.S.A. 48:3-52(d)(2), gives the BPU discretion in phasing in the total reductions over the next three years, but it does require that utilities reduce rates "by no less than five percent." This subsection does not mention relative to what date the 5% decrease is to be compared. Because there was a 3.9% rate increase in 1998, a 5% reduction from current (1999) rates would be only a 1.1% reduction from 1997 rates.

Appellants argue that section (d)(2) must be read in conjunction with section (d)(1) to make sense; there was no need to repeat the specification about "relative to 1997 rates" when that language was already present in (d)(1). Respondents argue that the clear language of the statute must control; the Legislature knew how to include the specification "relative to 1997" when it wanted to do so, its failure to do so in section (d)(2) must have been intentional. In support of their position, appellants refer to the language of the BPU's April 30, 1997 Final Report when recommending "a near term rate reduction on the order of 5-10%":

> In response to concerns that these targeted rate reductions may be eroded by subsequent upward rate adjustments between now and the date of retail competition, we emphasize that the targeted rate reductions must be in comparison to the current level of rates as of the date of this report.
>
> [(emphasis added).]

Indeed, the rate reduction in N.J.S.A. 48:3-52(d)(1) is from the 1997 level and thus complies with that recommendation. The traditional rubrics and principles of

statutory construction could lead to nothing more than our second-guessing the Legislature's intent. "The various canons or maxims of statutory construction are tools not icons. Wildwood Storage Center, Inc. v. Mayor & Council of the City of Wildwood, 260 N.J. Super. 464, 471 (App. Div. 1992). Common sense leads to the conclusion that the BPU's schedule of rate reductions is a reasonable interpretation of the statute. "Statutory interpretations should turn on the breadth of the legislative objectives and the common sense of the situation." Cty. of Camden v. S.J. Port Corp., 312 N.J. Super. 387, 396 (App. Div.), certif. denied, 157 N.J. 542 (1998). Also, "[o]ur task is to harmonize the individual sections and read the statute in the way that is most consistent with the overall legislative intent." Fiore v Consol. Freightways, 140 N.J. 452, 466 (1995).

Appellants are in essence saying that, of the total 13.9% in rate reductions, the 1999 reduction should be 8.9%, with the remaining 5% to come by 2002. Thus the greater part of the total reductions would be implemented immediately rather than spread more evenly over the course of three years. One of the primary concerns of the Act is the financial integrity of the utilities. N.J.S.A. 48:3-50(c)(4). The decision to spread the rate reductions out more evenly over the course of three years was consistent with that goal. Further undermining the argument to the contrary is the RA's proposal in Stipulation II, dated March 29, 1999, that the August 1, 1999, 5% rate reduction be from current (1999) rates.

IV

PROCEDURAL DUE PROCESS CONCERNS

Appellants RA and NJBUS contend that the regulatory proceedings involved numerous procedural irregularities which violated federal and state due process protections, principles of fundamental fairness, the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15 (APA), the BPU's own regulations, and the Act itself. In particular, they point to

the BPU's refusal to reopen the record after passage of the Act despite substantial changes in the legal standards on the basis of which the record had been developed. The RA also points to adoption of aspects of Stipulation I which had not been raised previously, without first giving the nonsettling parties an opportunity to address these issues in an evidentiary hearing. The RA alleges that the BPU, in its Final Decision, relied on an auditors' report, a document not in evidence, in arriving at a sum quantifying the amount of PSE&G's stranded costs. As to the securitization decision, the RA contends that the BPU violated the APA by failing to conduct hearings on PSE&G's financing petition and NJBUS contends that the BPU violated its own regulations when it excluded NJBUS from intervening in the securitization proceedings.

The Public Utilities Act, N.J.S.A. 48:2-2 to -91, gives this court jurisdiction to review any order of the BPU and to set all or part of an order aside "when it clearly appears that there was no evidence before the board to support the same reasonably." N.J.S.A. 48:2-46. However, the Public Utilities Act specifically prohibits this court from reversing BPU orders for minor procedural irregularities:

> No order shall be set aside in whole or in part for any irregularity or informality in the proceedings of the board unless the irregularity or informality tends to defeat or impair the substantial right or interest of the appellant.
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> [N.J.S.A. 48:2-46.]

This provision attempts to reconcile the Legislature's "sweeping grant of power" to the BPU to regulate utilities, [In re Alleged Violations of Law By Valley Road Sewerave Co., 154 N.J. 224, 235 (1998), with constitutional due process guarantees and principles of fundamental fairness.

The Fourteenth Amendment of the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." Article I, paragraph 1 of the New Jersey Constitution protects

similar interests. Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985). "Due process is a flexible concept that calls for such procedural protections as fairness demands," the essential components of which are notice and an opportunity to be heard. Mettinger v. Globe Slicing Mach. Co. Inc., 153 N.J. 371, 389 (1998).

Where constitutional protections do not adequately safeguard an important interest, principles of fundamental fairness come into play. State v. P.Z., 152 N.J. 86, 117 (1997). New Jersey's doctrine of fundamental fairness protects against "unjust and arbitrary governmental actions, and specifically against governmental procedures that tend to operate arbitrarily." John Doe v. Poritz, 142 N.J. 1, 108 (1995). This is a doctrine sparingly applied but available, "where the interests involved are especially compelling." Ibid.

In assessing the procedural adequacy of administrative proceedings, we start with the proposition that "[a]dministrative agencies enjoy a great deal of flexibility in selecting the proceedings most suitable to achieving their regulatory aims." Bally Mfg. Corp. v. New Jersey Casino Control Comm'n, 85 N.J. 325, 338, appeal dismissed, 454 U.S. 804, 102 S. Ct. 77, 70 L. Ed. 2d 74 (1981). For example, administrative agencies have the discretion to decide whether a case is to be classified as "contested," ibid. (citing N.J.S.A. 52:14F-7(a) of the ALA), whether to reopen a hearing to admit further evidence before the entry of a final decision, In re Kallen, 92 N.J. 14, 24 (1983), and whether to "look[] beyond the four corners of the record" in making a final determination. In re Shore Hills Water Co., 101 N.J. Super. 214, 222 (App. Div. 1968).

"Normally courts defer to the procedure chosen by the agency in discharging its statutory duty," subject, of course, to the requirements of due process and the APA. In re Request for Solid Waste Util. Customer Lists, 106 N.J. 508, 519 (1987). The agency has discretion "to select those procedures most appropriate to enable the agency to implement

legislative policy." Texter v. Department of Human Services, 88 N.J. 376, 385 (1982). Thus, the lines between rulemaking and formal adjudication sometimes become blurred; in fact, informal action constitutes "the bulk" of administrative action. In re Request for Solid Waste Util., 106 N.J. at 518.

In rate-setting cases, where the administrative agency must balance competing consumer and utility interests, courts allow the agency "the fullest exercise of administrative discretion." In re Rockland Elec. Co., 231 N.J. Super. 478, 494-95 (App. Div.), certif. denied, 117 N.J. 129 (1989). Unless therein a fundamental deficiency in procedure, exercises of administrative judgment will be affirmed as long as they are based on sufficient credible evidence and do not result in arbitrary or unreasonable consequences. In re N.J. Bell Tel. Co., 291 N.J. Super. 77, 89-91 (App. Div. 1996).

IV A. THE BPU DID NOT ERR IN REFUSING TO REOPEN THE RECORD AFTER PASSAGE OF THE ACT.

From late 1997 to 1999, when the unbundling, stranded costs, and restructuring proceedings were conducted, the standards which the parties relied on were the BPU's recommendations to the Legislature in its 1997 Final Report. The OAT proceedings for all four utilities were, in part, legislative-type hearings in the sense that they gathered evidence on generic issues affecting the deregulation process as a whole. As the hearings proceeded, the BPU's staff drafted proposed legislation, which it shared with the parties, and which was considered by the Legislature. The final draft of the deregulation bill was introduced on January 25, 1999, was passed by both the Assembly and the Senate three days later, and was approved on February 9, 1999 effective immediately. There were no traditional legislative hearings.

The Act mandated that rate reductions and competition begin by no later than August 1, 1999 less than six months after the Act went into effect. N.J.S.A. 48:3-53(a). To expedite the process of preparing for competition, the Act allowed the BPU to rely on proceedings dating as far back as April 1, 1997 when taking regulatory action:

> This act shall take effect immediately, except that, to the extent not already provided for by existing law, the authority of the board to order rate unbundling filings, restructuring filings, and stranded cost filings, perform audits of utility competitive services and take such other regulatory actions, including, but not limited to, the holding of hearings, providing of notice and opportunity for comment, the issuance of orders, and the establishment of standards, including auction standards adopted for application to an electric public utility that is executing a divestiture plan, and to take such other anticipatory regulatory action as it deems necessary to fulfill the purposes or requirements of this act shall apply retroactively to April 1, 1997 provided that the board shall take such actions as may be necessary, if any, to ensure that the requirements of this act are met in all regulatory actions related to this act which were commenced prior to its enactment.
>
> [N.J.S.A. 48:3-98 (emphasis added).]

There is accuracy to PSE&G's characterization of the administrative proceedings and the development of the legislation as being on a "parallel track." Appellants were aware of this because they were active participants in the process, as were over thirty other intervenors from the commercial, public interest, and utility sectors.

In the BPU's Final Decision, it rejected the contention "of some of the parties" that the record should be reopened, basing its decision on its March 25, 1999 order denying a

motion by the Mid-Atlantic Power Supply Association (MAPSA) to reopen the record after passage of the Act. There, the BPU said that the new legislation was not in and of itself a "sufficient basis to reopen the record." It continued:

> The record in this case clearly contemplated the enactment of comprehensive electric deregulation legislation. The hearings at the OAL were intended to develop an extensive record with respect to factual rate unbundling and stranded costs issues, while the restructuring plan hearings before the Board were intended to develop an extensive record on the more generic restructuring policy issues, all of which would then be used by the Board to develop a final order for each electric utility consistent with the legislative requirements, including the schedule laid out by the Legislature for the commencement of competition.
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> *****
>
> Based on our review of the Act and the record below, we find that the parties have had an extensive opportunity to litigate all relevant issues through discovery, the filing of testimony, many days of evidentiary hearings, cross-examination, initial and reply briefs and Exceptions and Reply Exceptions to the Initial Decision. The Board disagrees with and HEREBY REJECTS the generalized contentions of MAPSA, the Ratepayer Advocate, ACE, and NJBUS that the record needs to be reopened to comply with the requirements of the Act and/or due process.

The RA supported MAPSA's motion, but on grounds other than the claim that passage of the Act changed the standards on which the matter was litigated.

The RA now contends that the Act made two significant changes to the Final Report, necessitating taking additional evidence as permitted under N.J.S.A. 48:3-98. The changes

they point to are: (1) the Act resulted in a standard for stranded cost eligibility for post-1992 capital additions more favorable to utilities than the standard under the Final Report; and (2) the Act allowed a utility to securitize up to 75% of its generation-related stranded costs, whereas the BPU's September 19, 1997 order limited securitization to 50% of the BPU-determined stranded cost level.

NJBUS contends that the Act established new standards for determining stranded costs and shopping credits, concepts that did not exist in the Public Utilities Raw prior to passage of the Act. NJBUS also contends the BPU violated its own regulations when it denied MAPSA's motion to reopen the record, because N.J.A.C. 14:1-8.4 allows for reopening if there have been any "material changes of fact or law" since the last hearing.

At the outset, we recognize that the BPU's Final Decision was not based strictly on the standards announced in the Final Report and the record developed based on those standards, but on an agreement (Stipulation I), between some of the parties to which the appellants had ample opportunity to respond through comments. None of the changes referred to by the RA and NJBUS came as a surprise to them. Although stranded costs and shopping credits were not a part of the body of earlier Public Utilities Law, they were concepts which the parties had been aware of throughout these proceedings to the Final Report stage, when the deregulation legislation was being drafted and as the administrative hearings were being held.

The first change referred to by the RA, criteria for stranded cost eligibility of post-1992 capital additions, made it easier for PSE&G to meet the eligibility requirements. See N.J.S.A. 48:3-61(c). Thus, the standard on which the administrative proceedings were based was less favorable to PSE&G. At the OAR hearings, under the earlier, more difficult standard, the RA contested PSE&G's requested stranded cost recovery of $1.4 billion attributable to capital additions; the BPU staff, after reviewing the independent

auditor's report, supported inclusion of many but not all of the fossil and nuclear projects for which PSE&G sought stranded cost recovery. The ALJ agreed with the BPU staff that PSE&G had substantially justified inclusion of the bulk of its post-1992 capital additions and recommended that the BPU recognize their inclusions for stranded cost calculation purposes. In its Final Decision, the BPU accepted the stranded cost figure agreed to in Stipulation I.

The RA does not clarify how reopening the record to take evidence under the new, more lenient standard would help utility customers, who received the benefit of the more rigorous standard at the OAL hearings. Indeed, it seems more likely to hurt them. Nor does NJBUS explain how its cause would be aided by reopening the record on the Act's new standards for determining stranded costs and shopping credits.

The second change referred to by the RA, the right to securitize up to 75% of stranded costs rather than 50%, is really a substantive challenge to the statute rather than a due process argument. The RA explains how securitizing stranded costs precludes a "true-up" of the recovery amount to actual market costs because the transition bond order is legally irrevocable, but does not explain how taking evidence on this new securitization cap could hope to change the Final Decision. Indeed, according to the BPU's theory, it permitted PSE&G to securitize only 48% of its stranded costs. Thus hearing evidence on the new cap would have had no effect on the Final Decision.

Finally, NJBUS contends that the BPU violated N.J.A.C. 14:1-8.4 by failing to grant MAPSA's motion to reopen the record. That regulation describes the method for requesting that a hearing be reopened and gives the BPU the discretion to reopen hearings if it has "reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing. . . ." N.J.A.C. 14:1-8.4(b). The BPU soundly exercised its discretion when it determined that the passage of the Act did not raise any new issues uncontemplated during the course of the administrative

proceedings. NJBUS has not demonstrated how the BPU abused its discretion in denying MAPSA's motion to reopen.

IV B. THE BPU DID NOT ERR IN REFUSING TO REOPEN THE RECORD AFTER NEW ISSUES WERE ALLEGEDLY RAISED IN STIPULATION I.

The RA contends that Stipulation I raised three issues not addressed during the hearings: (1) formation of an unregulated affiliate (GENCO) and immediate transfer of PSE&G'S generating facilities to GENCO at book value; (2) a four-year transition period with rate reductions lasting only four years; and (3) the use of deferred accounting to achieve statutory rate reductions. The RA acknowledges that it had an opportunity to file comments on Stipulation I, but says that BPU had nothing in the record to review before adopting these newly-raised proposals and needed evidentiary hearings on them.

As a preliminary matter, since the RA had notice and an opportunity to be heard on the issues raised in Stipulation I, it received the essential requirements of due process. Mettinger 153 N.J. at 389. The BPU has the discretion to determine what kind of procedure was most appropriate to further legislative policy, Texter, 88 N.J. at 385, and it determined that proceeding on the basis of the record already before it, in addition to the parties' comments on the stipulations, was appropriate. Agencies are well within their authority to adopt stipulations as fact-finding tools, as long as they evaluate the stipulations and the parties have had an opportunity to argue against them. Petition of Pub. Ser. Elec. & Gas, 304 N.J. Super. 247, 268-72 (App. Div.), certif. denied, 152 N.J. 12 (1997). Furthermore, New Jersey has a strong public policy in favor of settlements. Dept. of Pub. Advocate, Div. of Rate Counsel v. New Jersey Bd. of Pub. Util., 206 N.J. Super. 523, 528 (App. Div. 1985). Here, although Stipulation I introduced some new proposals, it did not introduce new concepts which had never been considered by the parties during the proceedings.

IV-B 1. THE IMMEDIATE TRANSFER OF GENERATING FACILITIES TO AN UNREGULATED AFFILIATE, GENCO.

The Act allows for "the transfer of electric public utility assets from an electric public utility to a related competitive business segment of that electric public utility or of a public utility holding company. . . ." N.J.S.A. 48:3-55(d). N.J.S.A. 48:3-59(a) states that the BPU may require a utility to functionally separate its generation assets transferred to a holding company or a related competitive business segment, or it may order divestiture to an unaffiliated entity "if it finds that concentration or location of generation facilities results in market control that would adversely effect the formation of a competitive generation marketplace." Statement attached to Assembly Bill A-16, P.L. 1999, c. 23, comment on section 11. Complete divestiture has always been considered an option, and according to the BPU, the three other electric public utilities have chosen to divest themselves of their generating assets through sales to unaffiliated entities.

PSE&G'S original plan was to transfer its generating facilities to a separate unregulated entity after a seven-year transition period. This was the proposal which the ALJ discussed in his Initial Decision. There was, however, testimony on alternatives: for example, a witness on behalf of IEPNJ faulted PSE&G for separation of its generating facilities after, rather than at the beginning of, the transition period and a witness on behalf of the RA testified that complete divestiture was the best option.

During the settlement process, and after passage of the Act, PSE&G agreed to an immediate transfer of its generating facilities and assets to GENCO. In its Final Decision the BPU approved of the immediate transfer, saying that it was "amply supported by the record in this proceeding." The BPU found that the reason for PSE&G's delay of the transfer—"a liquid and visible capacity market did not yet exist in the PJM control area"—no longer existed and thus the conditions "support the immediate transfer of the assets." The BPU

noted that PSE&G proposed the immediate transfer in response to the "concerns voiced by a number of parties during these proceedings," adding that during the hearings several of the parties testified that "structural separation of generation-related assets into a separate corporate entity was necessary to provide adequate protections."

Thus, the various ways for an electric utility to handle its generation facilities—whether divestiture, transfer to an affiliate, or retention of generation facilities—were present in the testimony during the hearings. Because of the parties' opportunity to comment on Stipulation I, and the statutory validity of such a transfer, there was nothing procedurally unfair about the immediate transfer without further hearings.

IV-B 2. A FOUR-YEAR TRANSITION AND RATE REDUCTION PERIOD.

Under the Act, rate reductions must begin by August 1, 1999, N.J.S.A. 48:3-53(a), and be sustained for forty-eight months, or until July 31, 2003. N.J.S.A. 48:3-52(j). Although PSE&G originally proposed a seven-year transition period, Stipulation I proposed a four-year transition period -- from August 1, 1999, through July 31, 2003 -- during which rate reductions would be phased in. The RA and other parties to Stipulation II proposed a more extended period of rate reductions, with higher levels of reductions, which the BPU found relied upon "assumptions that are plainly incorrect."

PSE&G's period and rate of reductions comply with the Act. The RA's alternative was considered by the BPU, as were its comments on Stipulation I. The RA was not denied procedural due process in the matter and, in reality, is challenging the substance of the BPU's decision.

IV-B 3. THE USE OF DEFERRED ACCOUNTING TO ACHIEVE STATUTORY RATE REDUCTIONS.

Stipulation I proposed that the actual costs related to the SBC (social programs, nuclear plant decommissioning, demand side management program, manufactured gas plant

remediation, consumer education) and any fluctuation in the above-market costs of the Nonutility Generation Market Transition Charge (NTC) be subject to deferred accounting. Deferred accounting allows a regulated entity to defer on its books, rather than write off, certain expenses, based on a regulator's promise to allow recovery at a later date. The BPU accepted this deferred accounting procedure for SBC and NTC charges.

The reasonableness of the BPU's decision will be discussed in Issue V(D). For nor we need only note that, under the Final Decision, PSE&G has been ordered to make the statutorily mandated reductions, and there is nothing in the Act to prohibit deferred accounting. In fact, under N.J.S.A. 48:3-57(b)(3), the BPU

> may devise an alternative accounting or cost recovery process that permits an electric public utility . . . to provide basic generation service to its customers during the period that the electric public utility is providing for sustainable rate reductions . . . if the board determines that such process is necessary to mitigate the impacts of market price fluctuations and to sustain such rate reductions.

Thus, the BPU statutorily has the discretion to authorize such alternative accounting methods as it deems necessary. The Supreme Court has held that hearings are not needed on such discretionary accounting decisions. In re Jersey Central Power & Light Co., 85 N.J. 520, 528 (1981) (holding that the BPU acted within its discretion in accelerating amortization of electric utility's deferred energy account, which did not result in a rate increase, despite the lack of notice or hearings). Although traditional due process was not required for the deferred accounting decision, the RA did receive the essential requirements of notice and an opportunity to be heard when it was permitted to submit comments on Stipulation I.

IV C. THE BPU DID NOT INAPPROPRIATELY RELY ON A DOCUMENT OUTSIDE THE RECORD.

The document in issue is "PSE&G Stranded Cost Calculations," dated November 6, 1998 which was commissioned by the BPU staff and prepared by the independent auditors, ICF. The circumstances which led to its preparation were as follows: On August 17, 1998 in his Initial Decision, the ALJ made various recommendations on stranded cost recovery adjustments but found it "impossible to determine a specific stranded cost amount for the Board's consideration" and advised it would be "most appropriate for the parties to confer on this issue and submit to the Board for its review a stranded cost figure that incorporates my findings and recommendations."

On September 23, 1998 the BPU staff convened a conference for that purpose. The parties could not agree on the quantification of stranded costs. The BPU staff then commissioned the ICF report. On October 2, 1998 the RA submitted its exceptions to the ALJ's Initial Decision, which included its preliminary calculation that the ALJ's decision would result in stranded costs totaling $3.407 billion. In PSE&G's exceptions, it noted that its calculation of stranded costs based on the ALJ's suggested adjustments totaled $3.7 billion. On October 30, 199B the RA submitted its reply to PSE&G's exceptions, standing by its stranded cost calculation and noting that the BPU "may modify several of the ALJ's recommendations," rendering any quantification moot. For that and other reasons, the RA believed that any of the parties' "attempts to reduce the ALJ's decision into a discrete stranded cost figure is somewhat arbitrary and should not necessarily be Belied upon by the Board." The ICF report offered three different calculations based on different inflation rates, arriving at stranded cost valuations of $2.485 billion, $2.949 billion, and $3.310 billion.

On November 18, 1998 the Attorney General's office sent the ICF report to the parties, including the RA and the BPU Commissioner. In the cover letter, the deputy attorney

general stated that the stranded costs calculation "represents the best interpretation and quantification of the ALJ's Initial Decision" by ICF, but that the "quantification does not necessarily represent the position of the BPU staff." The letter also stated that the report was submitted "for your information." The DAG's letter did not specifically invite or preclude written comments. No responses were received.

In Stipulation I, PSE&G proposed stranded costs totaling $3.3 billion. In Stipulation II, the RA proposed stranded costs totaling $2.8 billion. The parties submitted written comments on the stipulations.

In its Final Decision, the BPU adopted the ALJ's decision as to adjustments for stranded costs and accepted "as reasonable" ICF's mid-range quantification of stranded costs based on the ALJ's decision, $2.949 billion, a compromise sum. However, the BPU made one minor modification to account for emission credits and lowered the figure to $2.94 billion for net-of-tax stranded costs.

In support of the contention that it was improper for the BPU to rely on the ICF report, because it was not formally admitted into evidence at the hearing, the RA cites In re Parlow, 192 N.J. Super. 247, 249 (App. Div. 1983). In Parlow we held that the Civil Service Commission improperly relied on an employee's service record, which was not admitted into evidence before the ALJ, in rejecting the ALJ's decision. We observed that there was no notice to the parties or opportunity for rebuttal. In response to Parlow the BPU says that there is nothing improper about relying on the assistance of staff or consultants, citing for support In re Allegations of Violations of Law and Admin. Code by A. Fiore & Sons, Inc., 94 N.J.A.R.2d 175, 195-96 (EPE 1994), rev'd in part on other grounds, 96 N.J.A.R.2d 305 (EPE1996). There the respondents objected to the ALJ directing the staff of the BPU to calculate penalty and refunds in accordance with his findings, after the close of the record. The Commissioner of the Department of Environmental Protection and Energy said that the "ALJ's directive is unobjectionable

and, indeed, commonplace. The Staff did not engage in ex parte activity, but "merely performed a ministerial task at the direction of the ALJ."

Of course, preparation of the ICF report was more than a merely ministerial task. However, unlike in Parlow, the parties were given copies of the document and knew it was prepared precisely in order to help the BPU quantify PSE&G's stranded costs. Although written comments were not requested, nothing prevented the RA from responding to this critical report. The Final Decision was not entered until August 1999, ten months later, so there was ample time and opportunity to respond. In fact, the report most certainly was considered by the parties in arriving at their own calculations of stranded costs for their stipulations, which were prepared in March 1999, four months after the ICF report was sent to them.

Because the RA had notice of the ICF report and an opportunity to respond to it, we conclude that the BPU's reliance on the report was not a procedural irregularity sufficient to deny the RA due process. It was neither fundamentally unfair, nor rose to the level required under N.J.S.A. 48:2-46 for setting aside the order.

IV. D. THE BPU NEED NOT HAVE CONDUCTED HEARINGS ON SECURITIZATION.

The RA contends that the BPU violated constitutional due process, the APA, and the Act by issuing a decision on securitization without conducting hearings because there were factual issues in dispute and the agency was acting in a quasi-judicial capacity. Relying on the 1998 stranded cost hearings was inappropriate, the RA says, because the 1999 securitization filing raised new issues not addressed therein. Even if hearings were not required, the RA urges it should have been given an opportunity to meet and rebut the expert analysis on which the BPU relied. Also the RA claims PSBSG made two important last-minute revisions to its

financing petition to which the RA did not have an opportunity to respond.

Securitization concerns the structuring and pricing of transition bonds, which are used to reduce stranded costs. Statement on Assembly Bill A-16, comment on section 14. PSE&G filed its financing petition in June 1999, after the hearings on rate unbundling and stranded costs and the BPU's April 21, 1999 summary order, which included the BPU's determination that PS8SG could securitize up to $2.4 billion of its net-of-tax stranded costs. On August 11, 1999 the RA filed comments, raising thirteen issues, including the contention that evidentiary hearings should be held on the matter. On August 24, 1999 the BPU held a public meeting at which it rendered its oral decision that such hearings were not required. On that same day the BPU issued its final decision in the rate unbundling, stranded cost, and restructuring proceedings, which elaborated on its April 21, 1999 summary order.

PSE&G filed revisions to its financing petition on September 2 and 10, 1999. According to the BPU, it actually received a copy of the second revisions on September 9, the day before a public meeting on the matter was held. The BSCRO was entered on September 17, 1999.

The APA provides for hearings in contested cases, N.J.S.A. 52:14B-9(a), which it defines as a proceeding in which "the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency . . . ." N.J.S.A. 52:14B-2(b). The Act does not require evidentiary hearings to be held on BSCROs. N.J.S.A. 48:3-64. In fact, the section of the statute that deals with BSCROs provides that "all proceedings in connection with the determination of bondable stranded costs, transition bond charges and bondable stranded costs rate orders shall be exempt from the provisions of Title 48 [Public Utilities] of the Revised Statutes and any regulations promulgated thereunder." N.J.S.A. 48:3-64(f). N.J.S.A. 48:3-64(a) refers

back to N.J.S.A. 48:3-62, the section on stranded cost recovery and transition bonds, which does not mention a hearing requirement. N.J.S.A. 48:3-64(a) does not refer back to N.J.S.A. 48:3-61, which requires hearings after the utility submits a stranded cost filing in order to establish a market transition charge. N.J.S.A. 48:3-61(c). After such hearings, the BPU must issue a stranded cost recovery order; but it may also issue a "successor order" setting forth the mechanism by which the utility will recover stranded costs. N.J.S.A. 48:3-61(c). The BPU persuasively characterizes the BSCRO at issue here as a successor order to its earlier restructuring order of April 21, 1999.

Even if a hearing is not required under the Act or the APA, it may be required by constitutional right if there are "material disputed adjudicative facts" at issue. Frank v. Ivy Club, 120 N.J. 73, 98 (1990), cert. denied, 498 U.S. 1073, 111 S. Ct. 799, 112 L. Ed.2d 860 (1991) (emphasis added). To support its assertion that there were numerous material factual issues in dispute, the RA points to the extensive discovery conducted by the BPU and the RA and the issues it raised in its August 11, 1999 comments. However, those issues involved policy decisions, such as the percentage of stranded costs to securitize, whether to have an MTC tax approved as part of the BSCRO, and legal decisions, such as whether aspects of the petition violate the Act. Such quasi-legislative decision making does not require trial-type hearings. High Horizons Dev. Co. v. Department of Transp., 120 N.J. 40, 51 (1990). Furthermore, the establishment of an MTC tax was suggested by the RA in comments on Stipulation I. Most of the purely adjudicative facts had already been dealt with in the hearings held on unbundled rates, stranded costs, and restructuring; e.g., the amount of stranded costs which would be securitized.

In its September 17, 1999 decision on the RA's comments, the BPU stressed, as it does again here, that the RA did not submit an affidavit setting forth the specific facts demonstrating that there were genuine issues requiring an

evidentiary hearing. See Frank, 120 N.J. at 99. The RA now points specifically to the "mechanics of recovery" of the MTC tax as a factual issue requiring evidentiary exploration. However, the factual question as to the amount of stranded costs and how much that figure would be when "grossed up" for taxes was decided in the stranded cost proceedings; at the securitization stage the question was one of methodology. This did not require trial-type hearings.

Although requisite due process is required, informal procedures may satisfy that requirement as long as the parties had "adequate notice, a chance to know opposing evidence, and to present evidence and argument in response." High Horizons, 120 N.J. at 53. Here, the RA had notice of PSE&G's financing petition, was given an opportunity to engage in discovery and comment on the petition, and to attend the public meeting on the petition. Although the MTC tax and the mechanics of its recovery may not have been addressed during the stranded cost hearings, the RA itself suggested the mechanism when commenting on Stipulation I, the BPU established the MTC tax in the Final Decision, and PSE&G included it in its financing petition, on which the RA commented. Thus, the essentials of due process were satisfied.

Even when adjudicative hearings are not required, agencies are not permitted to act on undisclosed evidence which parties have not had an opportunity to rebut. Ibid. The RA contends that the BPU adopted PSESG's September 2 and 10, 1999 revisions without giving it an opportunity to respond. The September 2, 1999 attachment is a computation of ratepayer savings for the fifteen-year period of the transition bonds, and the September 10, 1999 attachment is a revision of supporting schedules, which affect rate reductions and the level of TBC and MTC tax charges over the course of fifteen years. The RA acknowledges it received a copy of the September 2 submission and had an opportunity to respond to the submission before the September 10 public meeting. However, as to the September 10 submission, even the BPU

admits that there was no time for the RA to review and respond to it, although the BPU staff did have a chance to "consider it and reject it." Comparison of the September 10 submission and the attachment to the September 17, 1999 BSCRO supports the BPU's assertion that it did not rely on the September 10 submission or did not use the same figures as reflected in that submission. Since the BPU did not substantively consider the late submission, the RA cannot effectively complain that the agency acted on undisclosed evidence. We conclude that the BPU acted within its discretion by relying on the stranded cost hearings and the comment process in the securitization proceedings.

IV E. THE BPU PROPERLY DENIED NJBUS INTERVENTION IN THE SECURITIZATION PROCEEDINGS.

NJBUS contends that the BPU erred in rejecting its petition to intervene in the securitization proceedings. NJBUS claims its members have a significant stake in the outcome of the proceedings, their interest is markedly different from the interests of other parties, and they have considerable expertise and experience in utility regulation matters.

The standards for intervention in an administrative proceeding are governed by N.J.A.C. 1:1-16.3. Under that regulation, these factors are considered:

> the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.
>
> [N.J.A.C. 1:1-16.3(a).]

The BPU denied NJBUS's and Co-Steel's motions to intervene in the securitization proceedings because it found

that neither of the parties had satisfied the criteria of N.J.A.C. 1:1-16.3; specifically, they had not shown that they had special expertise on the matter of the structuring and pricing of transition bonds.

NJBUS was an active participant in the rate unbundling, stranded costs, and restructuring proceedings, presenting affidavits and testimony of numerous witnesses. As a representative of large business users of electricity, their expertise was useful in those proceedings. However, once the amount of stranded costs recoverable was determined, the matters to be resolved in the securitization proceedings -- how to structure, market, sell, and issue transition bonds -- required the type of technical financial expertise available from the BPU's financial adviser, Bear Sterns and Co. NJBUS does not offer any specific way it could have helped in these proceedings. Furthermore, the BPU had the input of the RA, which vigorously represents consumers of electricity in the State. The BPU did not abuse its discretion rejecting NJBUS's motion to intervene.

IV F. CONCLUSION.

The administrative actions in this case were the culmination of an unusual hybrid of quasi-adjudicative and quasi-legislative proceedings. The short time period in which the Act mandated introduction of retail competition and rate reductions was in very substantial part responsible for any departure from the standard fare of hearings and rulemaking. However, we unhesitatingly conclude the essential requirements of due process were provided to the parties throughout the hearings, comment periods, and settlement negotiations. None of the procedural irregularities alleged by the parties rise to the level of a denial of constitutional due process, a violation of the APA, or of the Act. The proceedings were marked by full and vigorous participation, reflecting the full range of both public and special interests.

V

FACT-FINDING DISPUTES.

The RA and NJBUS challenge several aspects of the BPU's Final Decision as unsupported by the evidence and arbitrary. They allege that (l) the BPU's valuation of generation-related assets for the GENCO transfer failed to reflect full market value of the assets, (2) the shopping credits established by the BPU were not high enough to foster competition, (3) PSE&G's reliance on deferred accounting violated the Act, (4) PSE&G's use of excess depreciation reserve funds to achieve rate reductions is inconsistent with the Act, (5) the BPU allowed PSE&G to securitize more than the 75% of stranded costs allowed under the Act, and (6) PSE&G failed to pass through to customers all savings from securitization.

An appellate court will not reverse a decision of an administrative agency unless it is arbitrary, capricious, or unreasonable or it is not supported by substantial credible evidence in the record as a whole. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980). In determining whether an agency decision is based on sufficient credible evidence, this court gives "due regard" to the agency's expertise when this is a factor. In re Taylor, 158 N.J. 644, 656 (1999).

V A. THE VALUATION OF GENERATION-RELATED ASSETS FOR THE GENCO TRANSFER.

The RA and NJBUS contend that the BPU violated the Act by allowing PSE&G to transfer its generating assets to GBNCO at an amount below full market value, which led to higher stranded costs eligible for recovery from customers. They claim that instead of relying on an administrative estimate based on predictions of future electric market prices, the BPU should have based its calculation on post-hearing out-of-state sales of comparable electric generation plants in the national market. They also contend that the BPU did not include a valuation for PSE&G's generation-related assets,

such as fuel supplies and contracts. Finally, the RA faults the BPU for waiving the procedural requirement of petitioning for a transfer of assets and NJBUS faults the BPU for allowing the transfer of assets before promulgation of regulations on such transfers.

N.J.S.A. 48:3-55(d) permits the transfer of an electric utility's assets to an affiliate at "full value," which is to be determined by the BPU:

> Pursuant to rules and regulations to be adopted by the board, the transfer of electric public utility assets from an electric public utility to a related competitive business segment of that electric public utility or of a public utility holding company, other than in the ordinary course of business, shall require board approval, and shall be recorded at full value as determined by the board.

The market value of generating assets that are transferred to an affiliate directly affects the quantification of stranded costs:

> For the purposes of quantifying the magnitude of stranded costs eligible for recovery via the market transition charge, the board shall require the electric public utility to demonstrate the full market value of each eligible generating asset or power purchase commitment over its remaining useful life or term and, fixing the level of the market transition charge, the board shall reach a determination as to the market value of such eligible assets and commitments, or implement a mechanism for such value to be determined.
>
> [N.J.S.A. 48:3-61(e).]

The electric utility has a duty to mitigate stranded costs by, among other things, obtaining the highest market value of its generating assets:

> For the purposes of quantifying the magnitude of stranded costs eligible for recovery via the market transition charge, the board shall require or impute all reasonably available measures for the electric public utility to mitigate the quantity of stranded costs, by: . . . (2) Maximizing the market value of the generating asset or purchase commitment.
>
> [N.J.S.A. 48:3-61(f)(2).]

The Act does not specify what methodology should be used in determining the value of assets to be transferred to an affiliate.

At the OAL proceedings, because PSE&G was not yet proposing immediate transfer of its generation assets to an affiliate, the value of those assets was litigated in the context of determining the amount of stranded costs PSE&G could recover for each of its generating plants. In his Initial Decision, the ALJ discussed the "administrative estimate" method of quantifying the market value of generation assets, which was relied on by PSESG and most of the intervenors:

> Absent divestiture, an administrative determination must be made to arrive at a quantification of stranded costs. The Company's methodology, which was broadly followed by all intervenors in their studies, was premised on the fact that market value can be estimated administratively by utilizing a market price forecast. The forecasted market energy price and capacity price, applied to the forecasted output of particular generating assets, is used to derive a projected market revenue of each facility on an annual basis. Forecasted annual cash expenditures including fuel, operation and maintenance (O & M) expenses, capital additions, taxes, administrative and general expenses and other ancillary costs are then subtracted from the projected annual market revenues. A comparable analysis is performed for

> each generating facility, as well as for each power purchase agreement with NUG contractors. The net results are discounted back to the present value using a discount rate of 8.42 percent, this value being based upon the Company's 1992 cost of capital, using the Company's capital structure provided in the last base rate case.

The ALJ then discussed the exceptions taken to this methodology by the RA, Enron, and the BPU's auditors, including those testified to by Michael Dirmeier on behalf of the RA, and PSESG's responses to those exceptions. The ALJ agreed to some of the points made by the RA, Enron, and the BPU staff, and he recommended that certain adjustments be made to PSE&G's forecast assumptions.

In its Final Decision, in response to arguments of some of the parties, the BPU found that it was not necessary to reopen the proceedings and take additional evidence on recent sales of generating assets in other states, due to the extensive hearings already held on the valuation issue and the lack of direct relevance of those sales, somewhat "instructive" though they might be:

> With respect to the valuation of the assets being transferred, there is a direct link between the value assigned these assets with respect to the transfer, and the magnitude of PSE&G's stranded costs: the higher the assigned value, the lower the remaining stranded costs. The issue of the value of PSE&G's generation assets was litigated at length in the stranded cost proceeding, as described in the Initial Decision and summarized hereinabove. Extensive testimony with respect to both the proper net book value of the assets to be utilized for purposes of stranded costs, as well as the net present value cash flows forecasted to be generated by the generation facilities over their remaining lives was presented in evidence at the Office of Administrative Law. The discounted net cash flow

analysis approach, which was utilized by PSE&G in its stranded cost calculation and utilized as well by other parties' witnesses in the case (albeit with different assumptions) represents an analysis that would be undertaken by a potential bidder to determine its offering price in an asset auction process. The ALJ weighed the arguments and rendered findings with respect to the various inputs, variables and assumptions underlying a discounted cash flow analysis, including market energy and capacity price forecasts, forecasted capital additions and operation and maintenance costs, unit output and rates of return. We FIND that additional hearings are not required on this issue because there is sufficient basis in the record for a determination of the value of PSE&G's generation assets, and we FURTHER FIND that all parties have had ample opportunity during the proceedings to advance their arguments and introduce evidence with respect to the value of these assets.

As summarized above, in the comments on the proposed Stipulation, a number of parties urged the Board to consider the results of various recent fossil fuel generation divestitures through the country, arguing that recent data indicates that, when put up for sale and competitive bid, electric utility fossil fuel generation has fetched prices in excess of book value. While generation trends as to the results of industry-wide asset sales may be somewhat instructive and while, as discussed below, we have considered them and taken them into account in our decision, we concur with the comments received from PSE&G that it is impossible to reasonably attempt to extrapolate PSE&G's asset values from the results from sales of other utilities' generating assets. Any number of unique and individual factors associated with a particular utility's assets may exist which would justify divergent outcomes

> or plant values. These factors include plant vintage and conditions, heat rates, location, state and/or local environmental regulations or restrictions, environmental liabilities, fuel restrictions, fuel commodity and transportation costs, labor agreements, state and/or local tax liabilities and market price conditions. These factors, as they apply specifically to PSE&G's assets, were included in this proceeding as part of the stranded cost calculations, as the discounted net cash flow analyses prepared by PSE&G and several other parties considered all future costs and revenues associated specifically with each individual PSE&G generating facility. A proposed analysis to bring the purported comparable sales into comparability was not offered by the proponents of Stipulation II, nor is it likely that such an analysis could be readily performed. We FIND, for the foregoing reasons, that it would be unreasonable to rely upon these recent sales as the basis for a determination of the value of PSE&G's generating assets. We FURTHER FIND that there is ample support in the record for the Board to determine the market value of PSE&G's generating assets, and that the discounted net cash flow analyses presented in the stranded cost proceeding are the appropriate mechanism to be utilized to render such a determination.

However, the BPU did rely on recent industry divestiture information in deciding that the market value of PSE&G's generating assets was $135 million more than the company proposed in Stipulation I:

> [W]e HEREBY FIND the level of net-of-tax owned generation stranded cost for PSE&G to be $2.94 billion. This amount, when compared to the level of net-of-tax stranded costs which PSE&G would be afforded the opportunity to recover via the

> proposed Stipulation ($3.075 billion), results in a reduction to net-of-tax stranded cost recovery of $135 million. This decrease of $135 million in net-of-tax stranded cost vis-a-vis the level proposed in the Stipulation represents a finding by the Board that the market value of PSE&G's owned generation assets is $135 million more than that assumed in the Stipulation. The comments received in response to the Stipulation, regarding recent industry divestiture information, would suggest that this increased value, vis-a-vis the Stipulation, should be assigned to the Company's fossil fuel generating units, since these types of units, as opposed to nuclear generating facilities, have obtained sales premiums. We therefore FIND, consistent with the general industry trends which have been noted in a number of the comments received, that the transfer value of the Company's fossil generating assets should be increased by $135 million. Accordingly, we FIND that the generating assets shall be transferred to Genco at the following market valuations: $0.046 billion for nuclear; and $1.857 billion for fossil. Thus, the full value of the generating asset transfer is $1.903 billion, in satisfaction of the requirements of subsection 7(d) of the Act, N.J.S.A. 48:3-55(d), which we FIND to be the full market value of the generating assets over their remaining useful life in accordance with the provision of subsection 13(e) of the Act, N.J.S.A. 48:3-61(e).

In addition to the $1.903 billion valuation of the generating assets that PSE&G will transfer to GENCO, the BPU allowed PSE&G to recover up to $540 million more in stranded costs (reduced from the $600 million proposed in Stipulation I) through an MTC, which the BPU referred to as a "transfer premium". The BPU calculated this as the difference between the $2.94 billion in total net-of-tax stranded costs and the $2.4 billion that it would permit PSE&G to securitize.

However, as NJBUS points out, $540 million is also the difference between the $1.903 billion asset valuation and the $2.443 billion referred to later in the Final Decision as the "final and fixed transfer value . . . which is the fair market value of the assets transferred considering all revenues derived from the BGS contract [between PSE&G and GENCO]." The BPU asserts that this reference to $2.443 billion was "merely intended to adjust the number contained in Attachment 4 [to Stipulation I] downward to reflect the fact that the BPU had reduced the 'transfer premium' included in Attachment 4 from $600 million to $540 million." Attachment 4, titled "Generation Fixed Transfer Value," consists of the following computation:

$5.058 billion	Net After Tax Book Value
(3.300)	Stranded Cost
$1.768*	Transfer Value
$ 600	MTC
$2.368	Amount Paid by Genco to PSE&G

*Plus Generation-Related Assets, including Nuclear Fuel and Materials & Supplies at Book Value.

Thus, $1.903 billion in transfer value of assets plus $540 million in MTC equals $2.443 billion, the amount paid by GENCO to PSE&G. However, we do not think that this calculation has any effect on the parties' challenge to the transfer premium.

Essentially, the RA and NJBUS argue that there is no justification for a transfer premium. The BPU justifies the $540 million transfer premium by saying that it benefits PSE&G's customers by allowing the utility to recover its stranded costs but transferring the risk of nonrecovery of stranded costs to GENCO:

> These funds shall be used by PSE&G, much like the proceeds from the transition bonds, to refinance and/or retire its debt and/or equity. This will benefit the utility and, ultimately, the customers of PSE&G by further reducing PSE&G's cost of capital.

> PSE&G will have the opportunity to recover up to $540 million, net-of-tax, through any retained retail adder associated with non-switching or returning customers, the MTC (exclusive of the NTC and the MTC-Tax) and the amount funded by the excess distribution reserve amortization; which funds will be, in turn, transferred to Genco as received pursuant to the terms of the BGS contract (as modified and approved herein). At the end of the Transition Period, the recovery of the $540 million will be reconciled with actual collections as set forth herein, with PSE&G being at risk for any shortfall and customers receiving the benefit of any overrecovery via a credit of such excess amount to the SBC. We FIND this mechanism to be consistent with the provisions of section 13 of the Act, N.J.S.A. 48:3-61, which require that we afford the utility the opportunity, but not a guarantee, for recovery of generation-related stranded costs, and that . . . we reconcile stranded cost recoveries to ensure that the utility will not collect in excess of its stranded costs. The above-described mechanism has the added benefit of transferring the risk of nonrecovery of stranded costs to Genco, the unregulated affiliate, and not the utility, since PSE&G will receive the $540 million from Genco up-front in the form of a transfer premium.

The BPU's decision to make its fact findings as to asset valuation based on the "administrative estimate" method used by the parties during OAL proceedings and approved of by the ALJ was reasonable. The BPU explained its reasons for adopting the methodology and there is absolutely no doubt there was substantial evidence in the record to support its findings on valuation based on that method. In re PSE&G Co., 304 N.J. Super. at 273-74. Whether to reopen the proceedings in order to consider new evidence of speculative relevance regarding the sale of generating assets in other states was within the BPU's sound discretion. N.J.A.C. 14:1-

8.4(b).[2] Considering the time-consumption and difficulty of extrapolating useful comparable information from out-of-state transactions, the rather insubstantial offer of proof (see R. 1:7-3), and the compressed time frame within which the BPU had to proceed to implement the Act, we conclude that the BPU did not abuse its discretion in refusing to reopen the proceedings on asset valuation.

NJBUS cites In re MCI Telecom. Corp., 263 N.J. super. 313, 318 (App. Div. 1993), in support of its position that the BPU may not ignore significant new developments in reaching its decision. That case involved the rejection of a petition which re-examined the subject of local competition for the first time in six years, at a time when the telecommunications industry had changed drastically, and when the original decision had been based on little hard evidence. Here, there was ample evidence on which to forecast the value of assets using an approved methodology. The out-of-state market-price evidence in fact was considered by the BPU and resulted in a $135 million increase in the transfer value of some of PSE&G's assets.

The BPU's decision to allow recovery of the $540 million in stranded costs through an MTC must be treated with deference because, as the administrative agency charged with enforcing the Act, its interpretation of the Act and its policy decision should be given great weight. Nelson v. Board of Educ. of Tp. of Old Bridge, 148 N.J. 358, 364 (1997); see Chevron U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 104 S. Ct. 694, 81 L. Ed.2d 694, 703 (1984) ("[C]onsiderable weight should be accorded to an executive department's construction of a statutory

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[2] N.J.A.C. 14:1-8.4(b) states:

> If, after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing, the Board will issue an order for the reopening of same.

scheme it is entrusted to administer, and the principle of deference to administrative interpretations"). The Act allows for, but does not mandate, a utility's full recovery of its stranded costs. The MTC is one mechanism for recovering stranded costs. The Final Decision allows for a true-up at the end of the transition period so that PSE&G will not be able to recover more than its stranded costs in violation of the Act. We see no basis for overturning this aspect of the decision.

The RA also asserts, based on the calculations in Attachment 4 to Stipulation I, that the BPU's asset valuation is mathematically inconsistent and arbitrary. As the RA says, the BPU did not make an independent determination of the net-after-tax book value of its generating assets and did not modify the $5.068 billion figure asserted by PSE&G. The RA goes through a series of calculations, but the crux of its argument is that the market value of $1.903 billion, plus stranded costs of $2.94 billion, should add up to the net book value of $5.068 billion; but they add up to only $4.843 billion, $225 million less than $5.068 billion. In Attachment 4, the transfer value proposed by PSE&G ($1.768 billion) and the stranded cost figure it proposed ($3.300 billion) did indeed add up to $5.068 billion. The BPU does not address this discrepancy in its brief but PSE&G explains it by pointing out that in Stipulation I PSE&G agreed to a total reduction of $225 million in unsecuritized generation-related stranded costs. The RA did not respond to this explanation in its reply brief, presumably conceding the validity of the explanation.

Both the RA and NJBUS fault the BPU for ordering the transfer of generation-related assets such as contracts, materials, and fuel at book value rather than fair market value and without any listing of these assets or litigation on them. Stipulation I proposed the transfer of generation-related assets such as "materials, supplies, and fuel" at book value and the BPU adopted the proposal in its Final Decision:

> PSE&G will transfer at book value at the time of transfer other generation-related assets including

> materials, supplies, and fuel, which book value we find to be the full value for such generation-related assets in accordance with subsection of the Act, N.J.S.A. 48:3-55(d). Such transfer prices ensure that PSE&G receives full value for the Generation Facilities and related assets and that PSE&G will not retain any liabilities associated with the transferred Generation Facilities or other generation-related assets and shall assure that customers' responsibility for stranded costs is established at the lowest reasonable level.
>
> [(emphasis added).]

N.J.S.A. 48:3-55(d) gives the BPU the discretion to determine the full value of assets, and the BPU determined that the book value of these types of assets was their full value. The RA had an adequate opportunity to comment on this aspect of the transfer at book value.

However, the BPU adopted another aspect of Stipulation I, that regarding the transfer of generation-related contracts to GENCO, without comment as to any inherent value of the contracts:

> In order to ensure that PSE&G does not retain any risk or liabilities associated with the electric generating business after the Generating Facilities have been transferred, the Board hereby orders that all contracts (except for the NUG contracts) associated with the electric generating business, including, but not limited to, wholesale electric purchase and sales agreements, fuel contracts, real and personal property interests, and other contractual rights and liabilities, be transferred from PSE&G to Genco simultaneous with the transfer of all generating assets, and to substitute the Genco for PSE&G as the party(s) to any such contracts.

PSE&G does not explain why the contracts should be transferred without a valuation. The BPU states that it is

"reasonable to assume that contracts and rights related to generating assets would be made available to potential purchasers of those assets at book value" despite the fact that *the Final Decision does not state that the contracts will be* transferred at book value. No one seemed to propose that any of the contracts were intrinsically valuable. We are not convinced by anything in this record that any generation related contracts had any measurable intrinsic net value. Indeed, some could become a decided liability, depending on market fluctuations.

We now turn to the purely procedural aspects of appellants' arguments. The RA contends that the BPU violated N.J.A.C. 14:1-5.6 when it waived this regulation's requirement that PSE&G petition it for approval to sell its generating property to GENCO. The only reference to this regulation in the Final Decision was as follows:

> The advertising requirements under N.J.A.C. 14:1-5.6 are waived because of the extensive nature of the record regarding valuation of the assets being transferred and no further authorizations by the Board are required to effectuate this transfer provided that all other regulatory approvals are obtained on a basis consistent with this Order.

The advertising requirements referred to above are in N.J.A.C. 14:1-5.6(b): property worth over $500,000 must be advertised for sale at least twice in the county in which it is located. Those requirements may be waived, under N.J.A.C. 14:1-5.6(i). In addition, under N.J.A.C. 14:1-1.2(a), procedural regulations may be relaxed for good cause and the rules are to be liberally construed so as "to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determinations of issues properly presented to the Board." Here, when the BPU said that it was waiving the advertising requirements of N.J.A.C. 14:1-5.6, "due to the extensive nature of the record regarding valuation of the assets being transferred," it was obviously explaining why none of the petition requirements of that regulation were

required, rather than just the advertising requirement of section (b). Stipulation I was, in effect, a proxy petition for the BPU's approval of the transfer of assets. The BPU did not *abuse its discretion in waiving the petition requirement.*

In its reply brief, NJBUS raises for the first time the contention that N.J.S.A. 48:3-55(d) requires the BPU to promulgate regulations regarding valuation of asset transfers to an affiliate before it approves any such transfers.. N.J.S.A. 48:3-55(d) provides that "pursuant to rules and regulations to be adopted by the board," the transfer of a utility's assets to an affiliate "shall require board approval."

The purpose of rulemaking is to give the public notice of anticipated agency action and an opportunity to participate and comment on the action before it becomes final, as well as to give the agency the benefit of the information that the public has to offer. Metromedia, Inc. v. Division of Taxation, 97 N.J. 313, 331 (1984). Here, over thirty intensely interested intervenors of all stripes had an opportunity to participate in the OAL proceedings, at which PSE&G's generating assets were valued for stranded cost purposes, and then by commenting on Stipulation I, which proposed the immediate transfer of generating assets. NJBUS has shown no harm by the BPU's approval of the transfer without first adopting regulations. Yahnel v. Board of Adjustment of Jamesburg, 76 N.J. Super. 546, 550 (Law Div. 1962), aff'd, 79 N.J. Super. 509 (App. Div.), certif. denied, 41 N.J. 116 (1963) (holding that Board's granting of variance without first adopting statutorily required rules did not invalidate Board's action when plaintiffs failed to show how they were harmed by the failure to adopt rules and they had a full opportunity to present their case to the Board). NJBUS also had the full opportunity to present its case.

V B. THE SHOPPING CREDITS

"Shopping credits" are the amount deducted from customers' electric bills when they switch to a nonutility supplier for their basic generation service. N.J.S.A. 48:3-51.

NJBUS contends that the level of shopping credits approved by the BPU is too low to encourage competition, their purpose under the Act. It faults the BPU for setting the credits at the same level as established by the Philadelphia Electric Company (PECO), citing a witness who testified that the market forces which made PECO shopping credits acceptable in 1998 had changed by 1999. Therefore, NJBUS asserts BPU's decision, which relied on out-of-date market data from a contiguous state, was arbitrary, capricious, and unreasonable, and a remand is required in order to develop a record which will result in more reliable forecasts of energy prices.

Under N.J.S.A. 48:3-52(b), electric utilities that provide basic generation service must also provide

> shopping credits applicable to the bills of their retail customers who choose to purchase electric generation service from a duly licensed electric power supplier. The board shall determine the appropriate level of shopping credits for each electric public utility in a manner consistent with the findings and declarations of the Legislature . . . . The reduction in electric public utility rates . . . shall be consistent with the goals of the act, including the creation of shopping credits . . . .

Among the policies advanced in the legislative findings and declarations section of the Act are lowering the cost of energy and fostering diversity in the supply of electric power by opening New Jersey to competitive markets. N.J.S.A. 48:3-50(a)(1), (2), and (7). N.J.S.A. 48:3-52(b) gives the BPU the discretion to determine the level of shopping credits which will encourage competition and will relate appropriately to the level of rate reductions.

In Stipulation I, PSE&G proposed shopping credits averaging 5.03 cents per kWh in 2000, rising to 5.10 cents per kWh in 2003. In Stipulation II, NJBUS and the other signatories proposed shopping credits averaging 5.40 cents

per kWh in 2000, based on the alleged PECO level of shopping credits, with adjustments for New Jersey costs and cost increases in the wholesale market. In an affidavit attached to Stipulation II on behalf of MAPSA, John Rohrbach, who was involved in the PECO rate-setting negotiations, said that "the underlying market forces that made PECO Shopping Credits acceptable have changed considerably since April 1998," when the PECO settlement was signed. He pointed specifically to higher energy prices. He also mentioned higher taxes in New Jersey. Rohrbach acknowledged that PSESG's proposed shopping credit level was higher than PECO's, but said that on "a real basis" they were lower and insufficient to support a truly competitive retail market.

The BPU adopted the shopping credit proposal in Stipulation I. In its Final Decision the BPU first emphasized the interrelated character of the level of rate reductions and shopping credits:

> [U]nder a price cap as mandated by the Act, once the other unbundled rate components, including provisions for stranded cost recovery, are established, higher shopping credits would result in lesser rate reductions, and vice versa, absent the deferral of the recovery of costs into some future period. In a very real sense then, the Board is required by the Act to balance the achievement of two crucial, yet potentially conflicting factors. All other things being equal, a movement too far in one direction, in favor of larger shopping credits at the expense of lesser rate reductions, would benefit electric power suppliers and/or shopping customers, at the expense of customers who do not switch suppliers. Conversely, a move too far in the other direction in favor of lower shopping credits to achieve higher rate reductions would benefit non-shopping customers, while potentially inhibiting the development of a competitive market by making it

> less attractive for third party suppliers to enter the marketplace, thus resulting in diminished opportunities for customers to switch suppliers.

After establishing the level of rate reductions during the four-year transition period, the BPU turned to the level of shopping credits:

> [I]t is plainly evident that the shopping credits embodied in the Stipulation are significantly higher than those proposed by the Company in its filing, and reflect consideration of the criticism leveled at that proposal by the parties to this proceeding, . . . some of which were found to have merit by the ALJ. The proposed shopping credits in the Stipulation reflect market capacity costs, in addition to market energy costs, and also include a retail adder as recommended by the ALJ. The market energy and capacity costs reflected in the shopping credits contained in the Stipulation are consistent with the market price projections presented in the testimony of Company witness Loxley. The shopping credits in the Stipulation also make provision for transmission costs, and the losses and sales tax which will be incurred by third party suppliers. We note that the shopping credits are on par with, and indeed on average slightly higher than those in the PECO service territory in Pennsylvania. These higher shopping credits are noteworthy because, both during the evidentiary proceeding and in comments on the Stipulation, various marketers have pointed to the PECO service territory as having the most robust and active retail electricity marketplace in the nation, and the PECO service territory lies in the same regional electricity marketplace as PSE&G.

The BPU faulted the Stipulation II proposal on shopping credit levels:

> [W]e find that the shopping credits proposed in Stipulation II are excessive, unsupported by the record, and based upon flawed reasoning. First, because of the interrelatedness between shopping credits and the rate reductions, as addressed above, and having established herein the appropriate levels for the other unbundled rate components . . . and having found that Stipulation II's underlying financial analysis is flawed, the level of shopping credits proposed in Stipulation II would lead to either lower rate reductions or a significant deferral of cost recovery, which would lead to higher rates in the future.

The BPU went on to discuss the allegations in Rohrbach's affidavit regarding the comparison to PECO shopping credit levels:

> [W]hile acknowledging that the shopping credits in the Stipulation are higher than those in PECO's territory, the proponents of Stipulation II assert that, on a "real" basis, the credits in the Stipulation are lower, citing asserted changes in the PJM electricity market and differences in costs between Jew Jersey and Pennsylvania. It is asserted in supporting affidavits that the credits in the Stipulation would have to be raised by about 0.6 cents in order to provide a comparable level of competition to that enjoyed by PECO customers. Based on our review of the submissions, the Board concludes that almost all of the claimed differences (approximately 5 of the claimed 6 mill average difference) relate to asserted increases in market prices since the PECO shopping credits were established. We FIND the claim that an increase in the shopping credits to reflect alleged market price increases is necessary in order to provide savings similar to those afforded in the PECO territory to be simply untrue; no provision was made in the PECO decision by the

> Pennsylvania Public Utility Commission ("PaPUC") to update the shopping credits to reflect changed market conditions, as is suggested be done here. To the extent that retail competition is flourishing in PECO's service territory, it is occurring at the fixed levels of shopping credits established by PaPUC in April 1998, despite alleged increases in market price conditions. Moreover, even assuming arguendo, that the cited market prices presented via a post-hearing affidavit are accurate, it is important to note that while the Stipulation's shopping credits are premised on long-term pricing forecasts which have been the subject of substantial review in the proceeding, the proponents of Stipulation II would have the Board premise a decision to set shopping credits for four years based upon a current price condition; however, such price conditions may change daily, if not more often. Accordingly, the Board is not persuaded that it reasonably could or should base its decision on this "snapshot" market information. Rather, we FIND that it is more appropriate to establish the shopping credit levels based upon the market price forecasts over the four year Transition Period which have been presented in this proceeding and which have been the subject of extensive review in the record.

The BPU's acceptance of the proposal in Stipulation I was based on a careful review of the record, including the Rohrbach affidavit. It recognized several important facts: PSE&G had agreed to a higher level of shopping credits than it originally proposed, Stipulation I took into account the ALJ's recommendation that there be a retail "adder" (which represents ancillary costs such as administration and marketing), and the level of shopping credits proposed in Stipulation I was consistent with the PECO level of shopping credits, which successfully had encouraged competition in a nearby geographic area. The BPU observed that PECO

succeeded based on forecasts of energy costs rather than on periodic updates based on actual costs and saw no reason to change that successful formula. There was ample evidence in the record on forecasts during the transition period. Thus, there is nothing arbitrary about the BPU's decision.

V C. PSE&G'S USE OF EXCESS DEPRECIATION RESERVE FUNDS.

The RA contends that the BPU violated the Act when it allowed PSE&G to amortize $568.7 million in excess money it had already collected from its customers to partially fund its statutory rate reduction. The RU says that this contradicts another aspect of the BPU's decision, where it rejected PSB&G's proposal to use $60 million in anticipated overrecovery balance in its levelized energy adjustment clause (LEAC) as of July 31, 1999 to fund part of its rate reduction.

The Act does not specify how the rate reductions are to be achieved or the source of funding for them. N.J.S.A. 48:3-52(d) - (j). It does, however, stale that the reductions should be "sustainable," N.J.S.A. 48:3-52(f), and that the maximum level of rate reduction "shall be sustained at least until the end of the 48th month following [August 1, 1999]." N.J.S.A. 48:3-52(j). The only caveat, but a very substantial one, regarding rate reductions is they should not "impair the electric public utility's financial integrity." N.J.S.A. 48:3-61(h).

Paragraph 4 of Stipulation I proposed:

> The parties agree that an excess electric distribution reserve in the amount of $568.7 million is to be amortized over three years and seven months beginning on January 1, 2000 and ending July 31, 2003. Amortization amounts will be $125 million in the year 2000, $125 million in the year 2001, $135 million in the year 2002, and $183.7 million in the year 2003.

In its Final Decision the BPU adopted this proposal verbatim. Stipulation II, to which the RA was a signatory, proposed that 60% of the $569 million excess depreciation reserve be applied to offset the rate increases it believed would occur in years five and six (2004 and 2005), after the transition period's mandatory rate reductions terminated; only the remaining 40% would be used to fund rate reductions during the four-year transition period. In its comments on Stipulation I, the RA objected to the amortization of electric depreciation reserve funds to fund rate reductions "because it represents excess money that has been collected from ratepayers, which would normally be returned via a reduction in depreciation rates." Yet, at the same time, the RA accepted the use of this money to fund mandatory rate reductions between 1999 and 2003, seemingly contradicting its own position.

In its Final Decision, the BPU said that the use of 60% of the depreciation reserve funds in the fifth and sixth years was "inappropriate, since the $569 million is already embedded in the Company's petition, and fully utilized and relied upon in the ALJ's recommended range of rate reductions, as well as to partially fund the rate reductions." Use of this amortization to fund additional rate reductions would "double-count" the source of funds.

The BPU did agree with the RA's comments regarding the LEAC over-recovery balance as of August 1, 1999 which "consists of funds over-collected from and appropriately returned to the ratepayers of PSE&G, with interest, and thus should be utilized for the benefits of customers, not the Company." The BPU found that the over-recovered amount should offset the NTC deferred balance rather than fund additional rate reductions in years five and beyond, as proposed by the RA. In this way the LEAC monies will be "available to mitigate the impact of recovery of any other deferred costs in year five and beyond."

Thus, the RA explicitly accepted the propriety of the use of depreciation reserve monies to fund rate reductions during

the four-year transition period. Furthermore, the BPU considered the RA's alternate proposal and rejected it based on its finding that it double-counted the depreciation reserve monies. It did not allow the use of LEAC monies to fund rate reductions but there is a difference between LEAC monies, which are normally returned directly to consumers with interest, and excess depreciation funds, which are returned indirectly via a reduction in depreciation rates. The BPU's decision in this regard was within its discretion and did not violate the Act.

V D. PSE&G'S USE OF DEFERRED ACCOUNTING.

As discussed above, in IV B 3, the BPU accepted the Stipulation I proposal that PSE&G be permitted to defer the actual costs related to the SBC and NTC charges. The RA contends that allowing PSE&G to defer these costs to a future time in effect makes any present rate reductions illusory by preordaining that there will be a rate increase after the four-year transition period. Such a rate increase, the RA says, violates that Act's mandate, under N.J.S.A. 48:3-52(f), that the utilities implement a .sustainable aggregate rate reduction." Also, the Final Report specified that utilities could not be guaranteed 100% recovery of stranded costs because the mandatory rate reductions might make that impossible.

As pointed out in V(C) above, there is nothing in the Act which specifies the way in which the rate reductions are to be funded. N.J.S.A. 48:3-52(d). Nor is there anything in the Act that prohibits the use of deferred accounting. In fact, the Act gives the BPU the discretion to permit an "alternative accounting process" which allows a utility to provide basic generating service while effecting rate reductions if the BPU determines that such a process is "necessary to mitigate the impact of market price fluctuations and to sustain such rate reductions." N.J.S.A. 48:3-57(b)(3).

Indeed, deferred accounting is an accepted method where there are fluctuations in costs which must be periodically

adjusted, such as utilities' fuel adjustment clauses. N.J.A.C. 14:12-4.1(b). For example, the LEAC permits utilities to charge customers based on estimates as to future fuel costs and then to make later periodic adjustments to reflect actual costs. In re Atlantic City Elec. Co., 310 N.J. Super. 357, 362 (App. Div. 1998).

Here, in its Final Decision, the BPU considered it appropriate and "consistent with the intent of the Act" to allow PSE&G "to fully recover reasonable and prudent expenditures for the types of programs reflected in the SBC"—the kinds of programs that benefit society, such as environmental, consumer education, and nuclear plant decommissioning. The BPU found that "deferred accounting treatment of under and over-recoveries . . . is necessary and appropriate in order to provide for full recovery [for social programs] under the legislatively required price cap mechanism."

Stipulation I provided for recovery of above-market nonutility generator (NUG) contract costs through an NTC set at an initial level of $183 million annually during the four-year transition period, with the difference between NTC recoveries and the actual above-market NUG contract costs subject to deferred accounting and interest accrual on under or over-recoveries. The BPU found that this mechanism would ensure "timely pass-through" to customers of the benefits of any NUG contract renegotiations, as required under N.J.S.A. 48:3-61; and the "periodic review and adjustment of the charge [would] ensure that the utility will not collect charges that exceed actual stranded costs."

The deferred accounting method for SBC and NTC charges allows for a reconciliation of the estimated and actual costs of these programs, and will benefit customers if there is an over-recovery. The deferral of the actual costs may not necessarily lead to rate increases after 2003, but even if they do, there is nothing in the Act that prohibits such increases. The language in N.J.S.A. 48:3-52(f) regarding a "sustainable aggregate rate reduction" must be read in conjunction with

N.J.S.A. 48:3-52(j), which leads to the conclusion that the rate reductions are only mandated through July 31, 2003. However, the legislative findings make it clear that the Legislature believed that retail competition would lead to competitive rates. N.J.S.A. 48:3-50(b)(5) and (6). We must recall, under N.J.S.A. 48:2-21(d), utilities must file a petition for a rate increase and the BPU may order a hearing before it determines whether to approve any rate increase, an additional safeguard for consumers.

V E. THE BPU DID NOT ALLOW PSE&G TO SECURITIZE MORE THAN THE 75% OF STRANDED COSTS ALLOWED UNDER THE ACT.

N.J.S.A. 48:3-62(c)(1) allows the BPU to authorize securitization "in a principal amount of up to 75 percent of the total amount of the electric public utility's recovery-eligible utility generation plant stranded costs." The BPU authorized PSE&G to issue up to $2.525 billion of fifteen-year transition bonds, which represented $2.4 billion of the $2.94 billion net-of-tax stranded costs ("grossed up" to $4.97 billion to account for federal and state taxes) plus $125 million of transaction costs, which include the fees and expenses of issuing, selling, and refinancing or refunding its debt. According to the BPU, this represented securitization of 48% of PSE&G's total eligible stranded costs. The BPU also allowed the anticipated taxes (about 40% and up) related to securitization -- the amount responsible for grossing up the $2.94 billion figure to $4.97 billion -- to be collected through a separate MTC tax over the course of fifteen years.

The RA contends that the BPU's decision allows PSE&G to securitize 82% of its stranded costs, if the net-of-tax $2.4 billion figure is calculated as a percentage of the net-of-tax $2.94 billion figure. The RA says this violates the purpose of N.J.S.A. 48:3-62(c)(1), which allows for securitization of over 75% of stranded costs only if a utility divests itself voluntarily of its generating plant, thus encouraging divestiture, because PSE&G has not divested but

only transferred its generating facilities to an affiliate. Furthermore, the RA says that the MTC tax is simply a gimmick to circumvent the 75% limit on securitization.

The Act defines "bondable stranded costs" as including the cost of retiring existing debt; federal, state, and local tax liabilities associated with stranded costs; and the costs incurred to issue, service, or refinance transition bonds. N.J.S.A. 48:3-51.. Thus, the BPU did not violate the Act by allowing the transaction costs of $125 million to be securitized. Nor did it violate the Act when it "grossed up" the $2.94 billion net-of-tax figure for total eligible stranded costs and arrived at $4.97 billion as the total that was "bondable." The only perhaps debatable question is whether the $2.4 billion figure is a net-of-tax figure, as the RA claims, and thus should not have been compared to the "grossed up" figure of $4.97 billion to arrive at a percentage of eligibility for securitization purposes.

In its Final Decision, after determining that the $2.94 billion net-of-tax stranded costs should be grossed up so that PSE&G could recover the state and federal income and like tax liability it would incur, the BPU said:

> [W]e concur with the concerns raised by Staff during the litigation of these proceedings, as well as the RPA and others during the comment period, and HEREBY REJECT as inappropriate and, in our view, inconsistent with the intent of the Act, the proposal within the Stipulation, supported by all signatories thereto except NJCU, that all taxes related to securitization be recovered through the transition bond charges. We conclude that the transition bond charge is appropriately utilized to provide and ensure collection of the principal and interest payments on the transition bonds. The assured collection of the bond principal and interest provided via the irrevocable transition bond charge is necessary in order to obtain the highest possible rating on the bonds, which, in turn, will result in the

> lowest possible interest rate on the bonds and resultant maximized ratepayer savings. We do not believe it appropriate, nor consistent with the intent of the Act, that the utilities' tax obligations be collected via the irrevocable transition bond charge. As indicated previously, however, it is entirely appropriate and necessary that the net-of-tax stranded cost number be grossed-up for ratemaking purposes, and that PSE&G be afforded the opportunity to fully recover these taxes.
>
> Accordingly, the Board HEREBY DIRECTS that a Market Transition Charge be established, coincident with the establishment of the transition bond charge, . . specifically for the collection of securitization-related Federal Income and State Corporate Business Taxes ("MTC-Tax"). The taxes to be collected through the MTC-Tax shall reflect the grossed-up revenue requirements associated with the net-of-tax amount of stranded costs, together with the estimated level of transaction costs, authorized herein for recovery through securitization.

Since the securitization-related taxes (responsible for the $2.94 billion figure being grossed up to $4.97 billion) are to be collected through a separate MTC tax, the $2.525 billion that the BPU authorized PSE&G to securitize with transition bonds was a net-of-tax figure. This conclusion is supported by a statement made by the BPU auditors: "If the $2.5 billion securitization is 'grossed up' to include taxes, it becomes a $3.5+ billion securitization issue. PSE&G calculated their stranded cost and their securitization to be net of or without income taxes."

The respondents do not specifically discount that argument, but rather distinguish the funds recovered through securitization from the money recovered through the MTC tax. For example, PSE&G points out that securitization allows it to get the funds immediately and use them to retire debt and

equity capital immediately, whereas the MTC tax gives it access to funds over the fifteen-year life of the transition bonds and the ability use those funds to pay federal and state income taxes as incurred. The unalterable fact remains that PSE&G in reality will securitize only $2.525 billion of its total eligible gross stranded costs (inclusive of local, state and federal taxes) of $4.95 billion or about 51%. This is well below the allowable 75% total.

The BPU apparently and understandably believes it will be better for consumers to allow the federal and state tax liability to be recovered through the MTC tax rather than through securitization. By creating the MTC tax, though not explicitly provided for by the Act but suggested by the RA, the BPU allows PSE&G to recover the tax liability that grossed up the $2.94 billion stranded cost figure to 54.97 billion. We reject the RA's argument that the 52.4 billion actually securitized should be calculated as a percentage of the stranded costs that are not being recovered in some other way, or the net-of-tax figure of $2.94 billion. Doing so leads the RA to the conclusion that the BPU allowed PSE&G to securitize almost 82% of its stranded costs, 7% more than allowed under N.J.S.A. 48:3-62(c).

On this point, we simply disagree with the RA. In this situation the Act permits the BPU to authorize the issuance of transition bonds "up to 75% of the total amount of the electric public utilities recovery-eligible utility generation plant stranded costs," N.J.S.A. 48:3-62(c)(1), as determined by the BPU in accordance with N.J.S.A. 48:3-61. As noted, "bondable stranded costs" includes "federal, state and local tax liabilities associated with stranded costs recovery." N.J.S.A. 48:3-51. We see no violation of the text, purpose or intent of the Act; the total actual securitization is well below the permitted 75% level.

V F. PSE&G HAS PASSED THROUGH TO CUSTOMERS ALL SAVINGS FROM SECURITIZATION.

The RA contends that the BPU has ordered PSE&G to pass along to its customers only those savings associated with the first four years of securitization rather than all savings during the fifteen-year period during which TBC charges will be collected, which violates the Act. As discussed in IV D, above, the RA also faults the BPU for relying on PSE&G's September 2 and 10, 1999 attachments to its financing petition, which it says offered confusing new projections of savings from securitization over the full fifteen-year period. NJBUS adds that even the BPU's assurance it will review the "distribution rate design" before the end of the transition period to see whether any additional future savings should be passed along to ratepayers violates the Act, because the Act requires the immediate pass-through to customers of all securitization savings over the term of the bonds.

In a related argument, NJBUS contends that the Final Decision violated the Act when it incorporated a 1% prepayment of anticipated securitization savings into the 5% August 1, 1999 rate decrease; specifically, it points to the provision that requires all securitization savings be passed along to customers as soon as the bonds are issued.

N.J.S.A. 48:3-62(a) allows the recovery of stranded costs through the issuance of transition bonds and the imposition of TBC charges on customers. It also provides:

> The entire amount of cost savings achieved as a result of the issuance of such transition bonds, whether as a result of a reduction in capital costs or a lengthened recovery period associated with otherwise recovery-eligible stranded costs or as a source of cash for the buyout, buydown or other restructuring of a power purchase agreement, shall be massed on to the customers of the electric public utility in the form of reduced rates for electricity.
>
> [N.J.S.A. 48:3-62(a) (emphasis added)].

The statute also provides that the issuance of transition bonds "will provide tangible and quantifiable benefits to ratepayers, including greater rate reductions than would have been achieved absent the issuance of such bonds and net present value savings over the term of the bonds." N.J.S.A. 48:3-62(b)(3). Furthermore, the rate reductions which result from the issuance of transition bonds "shall be made no later than the date on which the transition bond charge . . . becomes effective." N.J.S.A. 48:3-52(i).

Although securitization will not occur until this appeal is resolved, some of the savings anticipated from securitization are being passed along to customers even before the bonds are issued because the initial 5% rate reduction went into effect on August 1, 1999. Securitization will result in greater rate reductions during the four-year transition period than those required under the Act (13.9% rather than 10%). As the BPU said in the Final Decision, "if securitization is implemented" the proposed rate decreases will be increased to reflect any additional savings.

However, as the RA asserts, the transition bonds and TBC charges endure for fifteen years, and Attachment 2 to the BSCRO computes estimated savings to ratepayers from the transition bonds during the fifteen-year life of the bonds. But there are no mandatory rate reductions under the Act after the four-year transition period.

According to PSE&G, after the transition period ends, customers still will pay the company for distribution, transmission, and SBC and NTC charges, but they will be paying their power supplier for generation services. The only generation-related charge that customers will pay PSE&G is the TBC, and the savings from lower interest rates due to securitization will be passed along to customers through a TBC that will be lower than the MTC would have been absent securitization.

This explanation for the way securitization savings will be passed through to customers after the transition period

comports with the BSCRO, which calls for periodic adjustments to the TBC so that it reflects the lowest possible interest rates over the life of the bonds. Although the Act mandates that transition bonds savings be reflected in rate reductions, it does not mandate any such reductions after 2003. These two aspects of the Act must be read in conjunction. The BPU resolved the tension or apparent contradiction in the Act by ordering a reasonable alternative way to pass through the savings to customers.

The only troubling aspect of the respondents' position on this issue is a disagreement between PSE&G and the BPU on the meaning of certain language in the Final Decision. The BPU points out that it said it would review the overall level of savings and the level of distribution rate design before the end of the transition period to determine "whether any additional future securitization savings should be passed along to ratepayers in year five and beyond." The BPU cites to the following passage of the Final Decision:

> [W]e are concerned that, subsequent to the Transition Period, such rate design could have unintended and unnecessary impacts on PSE&G's customers, since the termination of rate reduction credit at the end of year four would, absent any other adjustment, result in an increase in rates in year five which would equal the amount of the credit in effect in year four. Moreover, the elimination of the credit in year five could result in an unpermitted shift in cost responsibility. Although it is not known at this time what the BGS [basic generation service] rate will be in year five or what the level of deferred balances for the SBC and NTC will be at that time, the Board is concerned that a simple removal of the rate reduction credit in year five without a reassessment of the other unbundled rate element, could result in total charges which exceed the total of the otherwise-appropriate unbundled rate elements. We also FIND it

> necessary and appropriate for the Board to review the overall level of rate savings as well as the level of the distribution rate design and the other unbundled rate components, including the SBC and the NTC, prior to the conclusion of the Transition Period to determine, among other things, whether any additional future savings should be passed along to ratepavers prospectively.
>
> [(emphasis added).]

In response to a reference by NJBUS to this portion of the Final Decision, PSE&G says that the BPU was referring to "potential savings from the SBC and NTC . . . not securitization savings." Indeed, the BPU Final Decision does not specifically refer to securitization savings, although the TBC is an unbundled rate component, just as the SBC and NTC.

We conclude the BPU's position that it will review rates to see if there should be post-transition period rate reductions does not violate the Act. If the BPU believes that the best use of securitization savings during the future period when rate reductions are not mandated is further rate reduction, then it can, in its discretion, so order. However, even if it does not do so, the securitization savings are being passed through to customers through the lowest possible TBC charges and lower MTC charges.

As for the RA's contentions regarding the September 2, 1999 submission by PSE&G, the due process argument was addressed in IV D, above. As noted there, the RA did have a week to question the "methodology" that PSE&G relied on in the submission when calculating the "expected net present value savings and rate reductions resulting from issuance of the Transition bonds." The RA does not now question any specific aspect of that methodology, but rather the inadequate time it had to respond to it. The RA had an opportunity, albeit a very limited one, to review and to question the

methodology. It was not absolutely denied notice or an opportunity to be heard.

Contrary to NJBUS's position, PSE&G's partial funding of the 5% August 1999 rate reduction through a 1% prepayment of anticipated securitization savings does not violate N.J.S.A. 48:3-52(i), which requires that the rate reductions resulting from issuance of the transition bonds "shall be made no later than the date on which the transition bond charge . . . becomes effective." As noted, the transition bonds have not yet been issued, but some anticipated savings have already been passed through to customers, per order of the BPU. The BPU accepted the 1% prepayment proposal in Stipulation I without comment in the Final Decision; in its brief the BPU said that its decision on this matter "reflects a proper balancing of the competing interests, and represents a pragmatic recognition that application of these funds are reasonably necessary to achieve [the Act's] mandated 5% immediate reduction, from rates previously adjudged by the BPU to be just and reasonable." NJBUS offers no justification for disturbing this aspect of the BPU's decision.

Affirmed.

BPU Order (Doc. A-1108-99T3) Dated Oct. 19, 1999
Agenda Date: 9/29/99

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

ENERGY

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S RATE UNBUNDLING, STRANDED COSTS AND RESTRUCTURING FILINGS	) ORDER DENYING) MOTION FOR) RECONSIDERATION)))))) DOCKET NOS. E097070461,) E097070462 AND) E097070463

(SERVICE LIST ATTACHED)

BY THE BOARD:

On September 13, 1999, Co-Steel Raritan ("Co-Steel") filed a motion for reconsideration of the August 24, 1999 Final Decision and Order ("Final Order" or "Restructuring Order") rendered by the Board of Public Utilities ("Board") in the above captioned matter. Co-Steel was an intervenor in the Public Service Electric and Gas Company's ("PSE&G") unbundling, restructuring and stranded cost proceedings which led to issuance of the Restructuring Order. On

September 23, 1999, PSE&G filed its answer to Co-Steel's motion.

Co-Steel is a large industrial customer served by PSE&G which takes power pursuant to a 199S contract under PSE&G's Experimental Hourly Energy Pricing Service tariff ("EHEP") approved by the Board by Order dated November 17, 1995 in Docket No. ER95010005 (hereinafter "Service Agreement" or "Contract"). Co-Steel states that electricity is one of the three most significant operating costs incurred at its Perth Amboy plant, and takes electric service with annual energy consumption exceeding 440,000,000 kWh which represents about 1 percent of PSE&G's total energy sales. The Contract with PSE&G is for a ten year term under which the first 13 million kWhs consumed each month and related demand ("Block 1") is priced, with certain minor variations, under PSE&G's High Tension Service tariff ("HTS"), and the remainder ("Block 2") is priced under a separate rate which takes account of certain adjustments for the ten year period ("Block 2 Discounted Rate") . The Contract is conditioned on Co-Steel investing $37 million in its Perth Amboy plant within a period of four years. The Contract also requires that PSE&G will be the sole source of power for the ten year term.

By its motion, Co-Steel seeks reconsideration of the Board's ruling in the Restructuring Order as it relates to Co-Steel. In the Restructuring Order, the Board (1) found that there is no legal basis for exempting Co-Steel from paying non-bypassable Market Transition Charges ("MTC"), Transition Bond Charges ("TBC") and Societal benefits Charges ("SBC") relating to its HTS tariff, and that there is no merit to Co-Steel's arguments since the cost of its power consumption under Block 1 will be reduced under the Act and its Block 2 usage will be governed by the Block 2 Discounted Rate and unaffected by the Restructuring Order; (2) rejected Co-Steel's arguments that it should be immediately released from the Contract to shop for an alternative supplier, since there has been no material change to the bargained for Contract, and because Co-Steel will be receiving power at a

net price that is lower than originally bargained for; and (3) rejected Co-Steel's arguments that it should be exempted from stranded cost charges after expiration of the Contract because the special pricing arrangements it bargained for will expire with the expiration of the Contract and Co-Steel will then have all the options available under applicable law. Restructuring Order at 113-114.

Co-Steel's Motion

In support of its motion for reconsideration, Co-Steel presents a number of allegations as follows:

> 1. The Board erred in failing to conclude that Co-Steel's ten-year Contract with PSE&G precludes the imposition of stranded cost charges either during or after the contract term. To the extent the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (the "Act"), on its face appears to mandate the application of stranded cost charges to Co-Steel, the Board-erred in not concluding that the Act as applied to the Co-Steel Contract violated the constitutional prohibition against impairing the obligation of contracts.
>
> 2. The Board erred in concluding that, as a result of the Final Order, Co-Steel will be receiving power at a net price lower than that originally bargained for.
>
> 3. In the alternative, in the event the Board ruled correctly with regard to the first numbered error above, the Board erred in concluding that the statutorily mandated percentage rate reduction should be applied only to Block 1 under Co-Steel's contract, rather than to both Blocks 1 and 2.
>
> 4. In the alternative, in the event the Board ruled correctly with regard to the first

numbered error above, the Board erred in concluding that under subsection 4 (d) of the Act Co-Steel's rates should be reduced effective August 1, 2002 by 13.9% from current rates, rather than 10% from 1997 rate.

5. In the alternative, in the event the Board ruled correctly with regard to the first numbered error above, the Board erred in concluding that the Act requires an initial reduction on August 1, 1999 of 5% from current rates, rather than 5% from 1997 rates.

[Co-Steel's Brief on Motion at 1-2]

Co-Steel discusses the above allegations at some length in Points 1 through 5 of its brief in support of its Motion for Reconsideration ("Brief on Motion"). These arguments are summarized hereinbelow.

In Point 1, Co-Steel argues, among other things, that it would not have entered into the Contract with PSE&G had it known that it would be subject to stranded cost charges after the contract period ended. In other words, Co-Steel argues that it was operating under the assumption that it would not be obligated to PSE&G in any way after the ten year period so that it could freely partake in the competitive market, and that it was its intent that it would lock in a lowered rate for the period. Co-Steel also asserts that there is sufficient evidence in the record to show that PSE&G had no intention of charging stranded costs at the time the Contract was negotiated and executed. Co-Steel further argues that the Contract, by its very terms, precludes charges other than those established under the Contract, either during its term or after its expiration. For these and other reasons, Co-Steel concludes that imposition of a charge for stranded costs during or after the term of the Contract falls outside of the Contract itself and would not be in keeping with the intent of the parties.

Co-Steel argues that it has lived up to its side of the bargain, in that it had the opportunity to move its operations out of New Jersey, but stayed because of the Contract; that it was required to make a $37 million investment in its Perth Amboy plant over a four year period, and did so; and that it is now confronted with additional unanticipated costs being imposed outside of the terms of the Contract. Co-Steel concludes, therefore, that principles of equitable estoppel (i.e. fundamental principles of fairness in light of Co-Steel's detrimental reliance) should preclude the collection of stranded cost surcharges from Co-Steel.

Co-Steel further asserts that the Act itself is unconstitutional as applied to Co-Steel because any collection of charges for stranded costs outside of the specific terms of the Contract would violate the contract impairment clauses of the United States and New Jersey Constitutions. Co-Steel asserts that the Act's imposition of a non-bypassable surcharge is clearly unconstitutional, and that the Board erred because it failed to make this finding in the Restructuring order.

Co-Steel also presents some additional arguments relating to language in the Contract. Thus, it argues that the MTC, TBC and SBC are not like other costs such as taxes and other assessments which under Section 7 of the Contract are allowed to be passed along to Co-Steel by PSE&G, because the MTC, TBC and SBC are to be collected by PSE&G "on its own initiative and for its own benefit or that of its shareholders." Co-Steel's Brief at 11, footnote 11. Co-Steel therefore concludes that the imposition of these charges is a clear impairment of the Contract and not just a pass-through of legitimate charges imposed by outside authorities. Co-Steel also argues that it is error to construe paragraph 9 of the Contract, which clearly indicates that the Contract is subject to changes in the law, to mean that any such future law would apply even where as here the law so clearly conflicts with the dominant purpose of the Contract. Co-Steel's Brief at 12, footnote 13.

In Point 2 of its brief, Co-Steel argues that the Board also erred when it stated on page 113 of the Restructuring Order that: "Co-Steel will be receiving power at a net price lower than that originally bargained for as a result of this Order." Co-Steel asserts that because it experienced, relative to other customers, a disproportionate increase in rates designed to recover Demand Side Management costs ("DSM") in April 1998, which amounts to an increase of 8.8 percent applicable to Blocks 1 and 2, its rates have not been offset by the 5 percent reduction in rates applicable to just Block 1 which was implemented in August 1999. For this reason, Co-Steel argues that it will have to pay significantly more than what it bargained for in 1995 and that the Board should reassess its view regarding how Co-Steel will fare under the Restructuring Order and under deregulation generally.

In Point 3 of its brief, Co-Steel argues in the alternative that should the Board determine not to reconsider its decision that Co-Steel must pay stranded cost charges, then the Board erred when it ruled that the rate reductions mandated by the Act are to be applied to Block 1 only and not Block 2. Co-Steel asserts that the Board's conclusion is in conflict with the Act and is unfair because it imposes on Co-Steel the full burden of stranded costs but allows only half the rate decrease granted to all other PSE&G customers.

On this point, Co-Steel argues that because subsection 4(d)(1) of the Act mandates that the level of rates for each customer class is to be reduced and because it is itself a separate customer class, its Block 2 rates should be reduced by the mandated reductions in the same manner as its Block 1 rates. It bases this position on the fact that it takes power under the Block 2 Discounted Rates pursuant to the EHEP tariff which, it asserts, is a separate customer class. Co-Steel contends that the Board's Restructuring Order erred in this regard, because it left Co-Steel's Block 2 consumption as not being part of any customer class, which it argues cannot be the case. Co-Steel concludes that because subsection 4(d) requires that there be rate reductions for all customer classes,

percentage rate reductions must be applied to Co-Steel's total consumption under both Blocks 1 and 2.

In Point 4 of its brief, Co-Steel argues in the alternative that should the Board uphold its decision that Co-Steel must pay stranded cost charges, it erred in determining that Co-Steel's rates should be reduced by 13.9% from current rates, rather than reduced 10% from bundled rates in existence as of April 30, 1997. Co-Steel argues in this regard that because the DSM related increase in its rates in 1998 was greater than 3.9 percent, a rate decrease of 13.9 percent does not satisfy the requirements of subsection 4(d) of the Act that Co-Steel experience a rate decrease which is at least 10 percent below rates in effect as of April 30, 1997.

In Point 5, Co-Steel also argues in the alternative that the Board erred in ruling that the rate decrease effective August 1, 1999 should be from current rates rather than from bundled rates as of April 30, 1997. Co-Steel argues that even though there is no specific reference in the Act to the 5 percent rate reduction being determined relative to bundled 1997 rates, it is logical to assume from the language of subsection 4(d) thereof that the Legislature intended to have the 5 percent reduction start from the same starting date as the 10 percent reduction which the Act explicitly requires be measured from bundled rates existing on April 30, 1997. Thus, Co-Steel concludes that under subsection 4(d) of the Act, each customer class should have experienced a 5 percent reduction relative to the aggregate level of bundled rates in effect as of April 30, 1997 and not relative to current rates, that is, rates in effect as of July 31, 1999.

PSE&G's Answer to the Motion

PSE&G first contends that the Board should not reach the merits of Co-Steel's arguments because Co-Steel did not file its motion for reconsideration within 15 days of issuance of the Restructuring Order, as is required by N.J.A.C. 14:1-8.6(a). It then goes on to address Co-Steel's arguments.

With regard to Point 1 of Co-Steel's brief, PSE&G maintains that all of Co-Steel's arguments set forth therein lack merit because they represent nothing new for the Board to consider which it has not already considered in the proceedings which led to issuance of the Restructuring Order. PSE&G also claims that there has been no showing of material errors of fact or law relating thereto. PSE&G concludes that this lack of new evidence or showing of error in Point 1 means that Co-Steel has failed to meet the standards for reconsideration followed by the Board. Because PSE&G believes that the Board has already adequately considered and rejected these arguments and because it believes that there is no new allegations of fact or law relating thereto, PSE&G does not answer each specific issue raised by Co-Steel in Point 1 but instead relies upon its earlier responses filed during the unbundling, stranded costs and restructuring proceedings.

As to Co-Steel's Point 2, PSE&G argues that Co-Steel is simply wrong when it asserts that the Board erred in finding at that Co-Steel will experience lower net rates as a result of the five percent August 1, 1999 rate reduction than what it had bargained for with P8E&G. PSE&G's contends that Co-Steel actually bargained for and the Contract explicitly provides for the inclusion of future DSM increases it now argues have caused its rates to be higher than what they were when the parties entered into the Contract. Because the inclusion of any future DSM charges on both Block 1 and 2 were anticipated under the terms of the Contract, PSE&G concludes that the August 1, 1999 five percent reduction actually reduces Co-Steel's rates to a level below that for which it bargained in 1995. PSE&G further argues that Co-Steel has not recognized that "but for" the Act and the Board's Restructuring order, there would have been no discount implemented August 1, 1999 and no future discounts under the Act relative to the bargained for prices in the Contract, and that these discounts improve, not worsen, Co-Steel's position relative to the bargained for prices under the Contract.

With regard to Point 3 of Co-Steel's brief, PSE&G argues that Co-Steel cannot claim that the Act supersedes the terms of the Contract to provide the rate reductions, while at the same time arguing that the Act cannot supersede its contract and allow for the imposition of stranded costs. In response to Co-Steel's claim that it is a customer class of one entitled to rate reductions not only relating to Block 1 charges under the HTS tariff, but also Block 2 charges, PSE&G argues that the Act does not supersede the Board approved contract wherein the parties agreed that its Block 1 usage would be priced about the same as an HTS tariff customer, with Block 2 usage covered by the terms of the Block 2 Discounted Rate. PSE&G also cites to EHEP tariff page number 85 which provides that "service under this rate schedule is available on an individual contract basis," and "that customer's cost of energy will vary hourly" with changes in "marginal energy cost," and that "all other terms of the service are described by the contract." PSE&G's EHEP Tariff Sheet No. 85.

PSE&G also argues that there is no merit to the argument in Point 4 of Co-Steel's brief that the Board erred when it concluded that by August 1, 2002 Co-Steel's rates will be reduced by 13.9 percent from current rates and not 10 percent from April 30, 1997 bundled rates. On this issue, PSE&G asserts that Co-Steel is simply overreaching with regard to the Restructuring Order since it is clear from the stipulation approved by the Board that Co-Steel will, by August 1, 2002, receive a 10 percent discount on its Block 1 usage relative to what its bundled rates as an HTS tariff customer would have been on April 30, 1997.

With regard to Co-Steel's Point 5, PSE&G argues that Co-Steel is misinterpreting subsection 4(d) of the Act when it suggests that the only logical explanation of the language therein is that the August 1, 1999 five percent reduction should be relative to bundled April 30, 1997 rates and not current rates. PSE&G maintains that Co-Steel's argument is not correct because under any reading of the plain language of

subsection 4(d)(2), had the Legislature intended that the starting point for the phase-in would be a five percent reduction from bundled rates as of April 30, 1997, it would have so stated in the Act. PSE&G also suggests that it is apparent that the Legislature intended to phase in the rate reductions over time and that it left much of this job to the Board's discretion, in keeping with its overall responsibility to ensure safe, adequate, and proper service. PSE&G concludes that Board in its discretion provided a logical interpretation of the Act that the five percent August 1, 1999 reduction in rates should be measured against current rates at the starting date for electric choice.

DISCUSSION

Absent a legislative restriction, administrative agencies have the inherent power to reopen or to modify and rehear prior decisions. (In re Trantino Parole Application, 89 N.J. 347, 364 (1982); Skulski v. Nolan, 68 N.J. 180, 195 (1975); Ruvoldt v. Nolan, 63 N.J. 171, 183 (1973); Handlon v. Town of Belleville, 4 N.J. 99, 106-107 (1950)), and as to the Board, N.J.S.A. 48:2-40 expressly provides that the Board at any time may order a rehearing and/or extend, revoke or modify an order made by it. Tp. of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 425 (1969); N.J. Bell Tel. Co. v. Bd. of Pub. Util. Comm'rs, 12 N.J. 568,579 (1953); Central R. Co. of N.J. Dept. of Public Utilities, 7 N.J. Super. 254-255 (1951); Sudler v. Environ. Disposal Corp., 219 N.J. Super. 52, 62 (App. Div.) certif. denied 109 N.J. 56 (1987). An administrative agency may invoke its inherent power to rehear a matter "to serve the ends of essential justice and the policy of the law." Handlon v. Town of Belleville, supra, at 107. The power to reappraise and modify prior determinations may be invoked by administrative agencies to protect the public interest and thereby to serve the ends of essential justice. Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99, 109 (App. Div. 1975) Generally, a party seeking reconsideration of a Board decision must demonstrate special circumstances, such as material error which justify reconsideration of the case.

Thus, where there is a new development or new evidence relating to established facts or a material misapprehension by the Board concerning an essential matter which is critical to its final determination, there is a reasonable basis for reconsideration of the Board's Order. See, In re Trantino Parole Application, 89 N.J. 347, 365 (1982) ; Trap Rock Industries, Inc. v. Sagner, supra, at 110. Absent such a showing, the Board will not reconsider its final decision.

As noted above, as a preliminary matter, PSE&G argues that the Board should not consider any aspect of Co-Steel's September 13, 1999 brief because it was filed more than 15 days after the signing of the Restructuring order which occurred on August 24, 1999. N.J.A.C. 14:1-8.6(a) provides that filings for reconsideration must be within 15 days of issuance of a final decision or Order by the Board. While Co-Steel's brief was filed late relative to the August 24, 1999 date of the Board's Order, the Board recognizes that copies of the 126 page Order were served upon the extensive service list on or about August 31, 1999 via first class mail. Therefore, it is reasonable for the purposes of this case to count the time for filing any motion for reconsideration from the August 31, 1999 date, and accordingly, to consider Co-Steel's motion and brief as having been timely filed.

With regard to Co-Steel's arguments in Point 1 of its brief, it is important to note that Co-Steel presented virtually identical arguments before the Administrative Law Judge ("ALJ") in this matter. While the ALJ did not address Co-Steel's concerns, as noted above, the Board at page 113 of the Restructuring Order found that the Act indeed applied to Co-Steel at least with regard to its HTS tariff and that customers utilizing this tariff must be assessed non-bypassable MTC, TBC and SBC charges. In this regard, N.J.S.A. 48:3-60, N.J.S.A. 48:3-61 and N.J.S.A. 48:3-67 provide that utilities may recover the above charges from all electric public utility customers. Therefore, in keeping with our ruling in the Restructuring Order, we conclude that the Act requires

payment of the MTC, TBC and SBC by Co-Steel relating to its Block 1 usage under the HTS tariff.

As noted above, Co-Steel also argues that the Board should have concluded that if the Act on its face mandates the imposition of stranded cost charges on Co-Steel, then the Board should have ruled that any application of the law as applied to the Co-Steel contract violates the constitutional prohibition against the impairment of contracts. The threshold issue here is whether or not there has in fact been an impairment of the Contract.

Co-Steel argues that the provisions of the Contract which allow for certain adjustments to the Contract due to the passthrough of new assessments or taxes (See, Co-Steel's Brief on Motion at 11, note 11) or changes in law (See, Co-Steel's Brief on Motion at 12, note 13) cannot be read to mean that the Legislature or the Board can impair the Contract as Co-Steel alleges has been done here. While the above contract provisions could be read to allow for the imposition of charges such as the MTC, TBC and SBC, Co-Steel distinguishes these charges from taxes or other assessments which are incurred by PSE&G and passed through to customers which are clearly allowed under the Contract, and argues that the MTC, TBC and SBC charges are different in that they constitute added amounts not imposed on PSE&G as would be the case with taxes, but are charges collected on its own initiative and f or its own benefit or that of its shareholders. Co-Steel also argues that any change in law which conflicts with the principal purpose of the Contract cannot be construed to override all other provisions of the Contract.

Contrary to Co-Steel's arguments, however, the Board did not determine that the MTC, TBC and SBC charges should be imposed on top of the Block 2 Discounted Rate. Therefore, there has been no interference with the Block 2 Discounted Rate. As stated in the Restructuring Order, the terms relating to Block 2 of the Contract remain unchanged, and accordingly, the argument that there has been an

unconstitutional impairment need not be addressed further with regard to Block 2 rates. With regard to Block 1, it is also clear that, unlike the Block 2 Discounted Rate, the HTS tariff is not designed, any more than any other tariff is designed, to insulate customers from future additional charges relating to the provision of service. In this regard, all customers, including Co-Steel, who take service under the HTS tariff, will be assessed the MTC, TBC and SBC charges and will also experience the rate reductions for said service as mandated by the Act. Therefore, because the bargained for agreement remains in place, with appropriate adjustments to the HTS tariff only, enactment of the Act has not interfered with or impaired the Contract in a manner which would give rise to a finding of unconstitutionality.

As noted above, Co-Steel argues that the Contract precludes imposition of stranded cost charges even after expiration of the Contract. Co-Steel also argues that the Board's ruling that Co-Steel not be exempt from such charges after the Contract expires will at that time, in effect, prevent it from entering into an alternative supply contract with other purveyors of power. After review, we see nothing in the record or in Co-Steel's arguments which indicates that the Board erred in its finding in this regard. In the Restructuring Order the Board states:

> Simply put, any special pricing arrangements for which it has bargained expire with the expiration of the special contract. After the expiration of its contract with PSE&G, Co-Steel will be subject to and have all of the options afforded under applicable law, including with regard to utility tariffs, and the ability to shop for an alternative supplier.
>
> [Restructuring Order at 114]

As described above, Co-Steel alleges in Point 2 of its brief that the Board made a factual error in the Restructuring Order in concluding that Co-Steel will be receiving power at a net

price that is lower than the price for which Co-Steel originally bargained. Co-Steel argues that the opposite is in fact true. The assumption behind its argument in this regard is that Co-Steel, in entering into the Contract, did not bargain for the 1998 DSM increase resulting from the DSAF proceedings, and that the rate decrease of 5 percent implemented August 1, 1999, did not fully offset this increase.

Contrary to Co-Steel's argument, it is clear that Co-Steel did indeed bargain for DSM cost recovery such as was implemented through the 1998 DSAF adjustment. In this regard, the Board notes that Co-Steel's Service Agreement with PSE&G provided for the recovery of DSM expenses on Block 1 kWh usage and that Co-Steel also entered into a stipulation which modified the Service Agreement to allow for DSM cost recovery to be extended to Block 2 kWh usage, which stipulation was subsequently approved by Board order dated November 17, 1995 (Docket No. ER95010005). Therefore, it is incorrect to argue as Co-Steel has, that Co-Steel is worse off now than it had anticipated under its bargained for contract even after the 5 percent reduction in August 1999. The 5 percent decrease in 1999 is a rate reduction which clearly benefits Co-Steel and in fact improves its position relative to what it was otherwise paying under its bargained for contract.

Co-Steel asserts in Point 3 of its brief that even if the Board determined that Co-Steel must indeed pay stranded costs, the Board erred in concluding that the statutorily mandated percentage rate reductions should be only applied to Block 1 under the Contract rather than to both Block 1 and Block 2. While the Block 2 Discounted Rate allows for certain rate adjustments during its term, including DSAF adjustments, under its terms Co-Steel still remains the beneficiary of contracted for reduced rates for a period of 10 years. In 1995, by entering into the Contract with PSE&G, Co-Steel was able to reduce its energy bill by a substantial amount. Thus, based on the average PJM billing rate assumed in Co-Steel's 1995 filing with the Board, the Block 1 and 2

rates under the Contract reduced Co-Steel's annual bill by approximately $7.3 million to about $18.7 million, or by about 28 percent. See, Board Order in Docket No. ER95010005 at 4-5. Moreover, increased rates passed on to other customers subject to PSE&G's tariffs which are not part of the allowed for adjustments under the Block 2 Discounted Rate are not to be passed along to Co-Steel. Despite this bargained for benefit resulting from the Contract, Co-Steel argues now that it should be the beneficiary of the mandated rate reductions not only for the service it takes under its HTS tariff (Block 1), but also under its Block 2 Discounted Rate. Co-Steel supports it argument by reference to subsection 4(d) of the Act.

The Board rejects the claim that the Act supersedes the terms of the Block 2 Discounted Rate to mandate further rate reductions. The Board believes that it is much more reasonable to interpret the limited reference to "customer class" set forth at subsection 4(d) of the Act, N.J.S.A. 48:3-52, to mean customers served under fixed tariffs, not customers that have made separate arrangements to receive service at heavily discounted rates. Therefore, the Board reaffirms its finding that the mandatory rate reductions do not and cannot apply to Co-Steel's Block 2 Discounted Rate.

We further note that resolution of Co-Steel's allegation in Point 4 that Co-Steel should receive only a 13.9 percent rate reduction as of August 1, 2002, will depend to a large extent on the particular tariff design to be developed for Co-Steel as an EHEP customer in 2002. Co-Steel's argument is based on the fact that because DSAF charges are recovered on a volumetric basis, its DSAF increases in 1998 were higher than those of other customers. Co-Steel thus asserts that it should experience, due to those earlier larger DSAF increases, a greater reduction in rates than those customers that may have experienced a DSAF increase closer to the overall average of 3.9 percent. The Board agrees that this issue should be looked into at the time the appropriate tariff designs covering these future rate reductions are Completed and

approved by the Board. Therefore, before the Board gives its final approval to rate reduction to be effective on August 1, 2002, it will consider the appropriate rate design for all of its customers including Co-Steel. In doing so, the Board will be considering any arguments Co-Steel may wish to present at that time.

As noted above, Co-Steel also argues that the 5 percent mandatory rate reduction implemented August 1, 1999, should be a decrease relative to April 30, 1997 rates rather than relative to current rates and that the Board, therefore, erred in applying said reduction to current rates. As the Board found in rendering the Restructuring Order, nothing in the Act mandates that the 5 percent reduction be set relative to 1997 rates. The Act only refers to the April 30, 1997 date in connection with the mandatory 10 percent reduction, not the 5 percent reduction. In this regard, the Board agrees with PSE&G in its Answer in this matter, where it argues that had the Legislature intended to reduce rates by 5 percent as of the date of implementation of retail choice relative to 1997 rather than current rates, it would have explicitly added language to this effect in the Act. Therefore, we find no basis for reconsidering said decision at this time.

In view of the foregoing, it is clear that Co-Steel has not met the Board's standards for reconsideration of the Restructuring Order in that there has been no showing that the Board made a material error of fact or law in the Restructuring order. Moreover, to a great extent, Co-Steel is rearguing issues it has already argued during the proceedings which led to issuance of the Restructuring Order and has not provided new evidence related to a new development in this case which would cause the Board to reconsider its rulings. Therefore, after review, the Board HEREBY FINDS and CONCLUDES that Co-Steel's arguments lack merit and HEREBY DENIES Co-Steel's Motion for Reconsideration.

DATED: 10/19/99 BOARD OF PUBLIC UTILITIES

BY:

/s/_____
HERBERT H. TATE
PRESIDENT

/s/_____
CARMEN J. ARMENTI
COMMISSIONER

/s/_____
FREDERICK F. BUTLER
COMMISSIONER

ATTEST: /s/_____
MARK W. MUSSER
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of PublicUtilities

/s/_____

BPU Order (Doc. A-772-99T3)
Dated Sept. 17, 1999

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

AGENDA DATE: 09/10/99

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GASCOMPANY FOR A BONDABLE STRANDEDCOST RATE ORDER IN ACCORDANCE WITH CHAPTER 23 OF THE LAWS OF 1999, TO AUTHORIZE THE IMPOSITION OF A NONBYPASSABLE TRANSITION BOND BONDABLE TRANSITION PROPERTY, THE ISSUANCE AND SALE OF NOT TO EXCEED $2.525 BILLION AGGREGATE PRINCIPAL AMOUNT TO TRANSITION BONDS BY A FINANCING ENTITY TORECOVER PETITIONER'S BONDABLE STRANDED COSTS, AND THEAPPLICATION OF TRANSITION BOND PROCEEDS TO RETIRE OUTSTANDING UTILITY DEBT, EQUITY OR BOTH, AND TO APPROVE THE FORMULA FOR THE CALCULATION AND ADJUSTMENT OF THE TRANSITION BOND CHARGE AND MARKET TRANSITION CHARGE-TAX RELATED THERETO.

BONDABLE STRANDED
COSTS RATE ORDER

DOCKET NO.: EF99060390

(SERVICE LIST ATTACHED)

BY THE BOARD:

By Petition filed with the Board of Public Utilities ("Board" or "BPU") on June 8, 1999 ("Petition"), Public Service Electric and Gas Company ("Petitioner"), for purposes of recovering the stranded costs deemed eligible for rate recovery by the Board in the Summary Order dated April 21, 1999, which was more fully detailed in the Final Decision and Order dated August 24, 1999 ("Restructuring Order"), in Docket Nos. E097070461, E097070462 and E097070463, together with other bondable stranded costs described in the Electric Discount and Energy Competition Act ("Act"), P.L. 1999, c. 23, codified at N.J.S.A. 48:3-49, et seq., and to allow Petitioner to comply with the rate reduction requirements determined by the Board to be necessary and appropriate consistent with the provisions of Sections 4 and 13 of the Act, requests that the Board issue an irrevocable bondable stranded cost rate order (the "Financing Order") to authorize: (i) the imposition of a nonbypassable transition bond charge, as provided in Section 18 of the Act, and the collection of such charge (the "Transition Bond Charge") by Petitioner or another entity approved by the Board; (ii) the sale of the Bondable Transition Property (as defined below) to an approved financing entity; (iii) the issuance and sale of not to exceed $2.525 billion aggregate principal amount of transition bonds (the "Transition Bonds") by the financing entity to recover Petitioner's bondable stranded costs and to apply the proceeds of such bonds to retire Petitioner's outstanding debt, equity or both; (iv) the formula for the imposition and adjustment of a nonbypassable market transition charge (the "MTC-Tax") and the collection of such charge as previously authorized by the Board in the Restructuring Order to recover Federal Income and State Corporate Business Taxes associated with the Bondable Transition Property (as defined below) and the collection of the Transition Bond Charges and the MTC-Tax (the "MTC-Tax Component") to reconcile future tax rates and MTC-Tax collections to assure full recovery of the MTC-Tax Component; and (v) the formula for the calculation and adjustment of the Transition Bond Charge.

Petitioner has stated that the proceeds of the Transition Bonds (net of Upfront Transaction Costs (as defined below) will be used by or on behalf of Petitioner solely for the purposes of reducing the amount of its otherwise recovery-eligible stranded costs, through the retirement of debt or equity, or both. Petitioner states that the entire amount of cost savings achieved as a result of the issuance of the Transition Bonds shall be passed on to customers in the form of reduced rates for electricity.

1. PROCEDURAL HISTORY

On April 30, 1997, the Board issued an Order adopting and releasing a document entitled "Restructuring the Electric Power Industry in New Jersey: Findings and Recommendations" ("Final Report"). The Final Report contained the findings and recommendations concerning the future structure of the electric power industry in New Jersey, including the recommendation that in the future electric consumers be offered a choice of electric power suppliers in order to effectuate substantial economic benefits by way of lower electric bills and the provision of more service options to the State's residents and businesses.

Recognizing that there were a number of substantial procedural steps necessary to implement the recommended policies and to prepare for the commencement of retail competition, the Board directed in that Order that each of the State's four investor owned electric utilities make three filings: a rate unbundling petition, a stranded cost petition, and a restructuring plan.

On July 11, 1997, the Board issued an Order Establishing Procedures, wherein it determined to transmit each utility's rate unbundling and stranded cost filings to the Office of Administrative Law ("OAL") for hearings and the issuance of an Initial Decision. The Board also determined to retain the restructuring plan filings for its own review and, as necessary, hearings.

On July 15, 1997, Petitioner filed its Proposal in Response to the Final Report. The unbundling and stranded costs portions of Petitioner's filing were transmitted to the OAL and assigned to Administrative Law Judge ("ALJ") Louis G. McAfoos t/a (BPU Docket Nos. E097070461 and E097070462 respectively). The restructuring portion of the filing was retained by the Board (BPU Docket No. E097070463).

Twenty days of evidentiary hearings on the unbundling and stranded costs proceeding were conducted by ALJ McAfoos at the OAL between February 9, 1998 and March 18, 1998. During that time period, witnesses were cross-examined on their prefiled direct testimony, as well as on any filed rebuttal or surrebuttal testimony. At the close of hearings, a briefing schedule and issues outline were adopted by ALJ McAfoos. After requesting and receiving extensions of time from the Board, Initial Briefs were filed on or about April 13, 1998. Reply Briefs were filed on or about April 20, 1998.

After the Petitioner's unbundling and stranded cost hearings and briefing were completed at the OAL, approximately twenty additional days of evidentiary hearings were held before Commissioner Carmen J. Armenti between April 27, 1998 and May 28, 1998. During these dates, the parties presented testimony and conducted cross-examination on certain identified restructuring issues affecting all four electric utilities.

Following the close of hearings before Commissioner Armenti, briefs and reply briefs on the restructuring issues were filed on June 26 and July 17, 1998, respectively.

After requesting and receiving an extension of time from the Board, ALJ McAfoos issued an Initial Decision and Report on Petitioner's unbundling and stranded cost filings on August 14, 1998. The parties filed Exceptions and Replies to Exceptions to the Initial Decision with the Board on October 2, 1998 and October 30, 1998, respectively.

On February 9, 1999, Governor Whitman signed the Act into law. The Act authorizes the Board to permit competition in the electric generation and natural gas supply marketplaces and such other traditional utility areas as the Board determines. In addition, all four electric utilities were mandated to implement specific rate reductions over a period of four years. Among other things, the Act requires that the Board, by Order, shall provide that by no later than August 1, 1999 each electric public utility shall provide retail choice of electric power suppliers for its customers, reduce its aggregate level of rates for each customer class by no less than five percent, unbundle its rate schedules and establish so-called "shopping credits" applicable to the bills of retail customers who choose alternative electric power suppliers.

By Order dated February 16, 1999, the Board established guidelines and a schedule for the commencement of settlement negotiations among the parties in the Petitioner's stranded costs and unbundling proceedings. The Board set a deadline of March 3, 1999 for the submission to the Board of a negotiated settlement, which deadline was later extended to March 5, 1999. No comprehensive settlement was reached among all the parties; however, on March 17, 1999 a proposed stipulation of settlement ("Stipulation") was filed by Petitioner and eight other parties. A proposed alternative stipulation of settlement ("Stipulation II") was submitted to the Board on March 29, 1999 by the Division of the Ratepayer Advocate and five other parties. The parties were provided the opportunity to submit comments to the Board on the Stipulation by April 5 and comments on Stipulation II by April 7, 1999.

At its April 21, 1999 open public agenda meeting, the Board found that with certain modifications the Stipulation could serve as a reasonable framework for a fair and reasonable resolution of the matters and issued its Summary Order dated April 21, 1999 ("Summary Order") memorializing the Board's decision in BPU Docket Nos. E097070461, E097070462 and E097070463. In that

Summary Order, the Board determined, among other things, that Petitioner would have an opportunity to recover up to $2.94 billion net of tax of stranded costs, in part through the securitization of $2.4 billion.

As noted above, Petitioner filed its Petition in this securitization matter on June 8, 1999. In response, by motion filed July 2, 1999, the New Jersey Business Users filed a motion to intervene in this matter. On July 9, 1999, Co-Steel Raritan also filed a motion to intervene. On July 22, 1999, Petitioner filed separate responses to both motions. On July 23, 1999, movants filed individual replies to Petitioner's responses. At its open public agenda meeting on July 26, 1999, the Board denied both motions (BPU Docket. No. EF99060390).

On August 11, 1999, the Ratepayer Advocate filed a letter dated August 11, 1999 in which it raised 13 Issues, including an argument that evidentiary hearings (Issue I set forth in the Ratepayer Advocate's Memorandum) are required to be held in this Docket. On August 13, 1999, Petitioner filed its reply thereto. By letter dated August 24, 1999, Petitioner submitted a proposal to resolve two of the Issues (Issues IX and X) raised by the Ratepayer Advocate. At its open public agenda meeting on August 24, 1999, the Board rendered its findings regarding Issues II through VIII and Issue XIII. The Board also found that hearings were not required with respect to Issues IX and X and held in abeyance a decision on Issues XI and XII. The Board has carefully considered the Ratepayer Advocate's comments as well as the response thereto by Petitioner, in rendering this Order and Issues IX through XII are addressed herein in Section 5.

As noted, by Order dated August 24, 1999, the Board issued the Restructuring Order in the unbundling, stranded cost and restructuring proceedings (Docket Nos. E097070461, E097070462 and E097070463). In doing so, the Board memorialized with greater detail the Board's April 21, 1999 decision approving the level of stranded costs and the amount to be securitized in this financing proceeding. A

fuller description of the procedural history regarding the unbundling, stranded costs and restructuring proceedings is included in the Restructuring Order.

On August 9, 1999, Petitioner filed with the Board a copy of the Special Purpose Entity's ("SPE") (defined below) Registration Statement on Form S-3 relating to the Transition Bonds ("SEC Filing"). On September 2, 1999, Petitioner filed revised Attachment A-1 to its Petition (describing Ratepayer Savings methodology) as well as its quarterly report on Form 10-Q with the Securities and Exchange Commission ("SEC") for the quarter ended June 30, 1999 ("10-Q").

2. TRANSITION BOND TRANSACTION

a. Proposed Structure

A general description of the Transition Bond transaction structure (the "Transition Bond Transaction") proposed by the Petitioner follows. This proposed structure is subject to modification, depending upon the requirements of tax authorities, input from underwriters in connection with the marketing of the Transition Bonds and negotiations with nationally recognized statistical rating organizations (the "rating agencies") selected by Petitioner to assign credit ratings to the Transition Bonds. Petitioner states that the proposed structure is intended to minimize debt service costs, maximize ratepayer savings and create a substantially level charge over the life of the Bonds while obtaining the best possible rating for the Transition Bonds as asset-backed securities. Petitioner has requested that the Board authorize the execution of hedging arrangements (as described in Paragraph 2(e) below). The final structure, pricing, terms and conditions will be determined by Petitioner at the time Transition Bonds are priced, subject to an approving certification by the designee (the "Designee") of the Board as provided herein.

In the Restructuring Order, the Board approved the issuance of up to $2.525 billion of Transition Bonds to permit

the recovery by the Petitioner of $2.4 billion of net of tax bondable stranded costs plus transaction costs not exceeding $125 million. The Board also determined in the Restructuring Order that the Federal Income and State Corporate Business Taxes which are reflected in the grossed-up revenue requirement associated with the $2.4 billion in net of tax stranded costs being securitized are legitimate recoverable stranded costs to be recovered through the MTC-Tax approved in the Restructuring Order.

The Petitioner has requested the authority to recover its bondable stranded costs as defined in Section 3 of the Act, including (1) the costs, (including, but not limited to, redemption premiums, unamortized costs of issuance and interest and preferred dividends accruing on or after the issuance of the Transition Bonds), estimated at $100 million, of retiring existing debt or equity, or both, with the proceeds of the Transition Bonds ("Capital Reduction Costs"); (2) the costs, estimated at $25 million, incurred to issue the Transition Bonds ("Upfront Transaction Costs"); and (3) principal and interest on the Transition Bonds, together with the costs of paying, refinancing, administering and servicing, credit enhancing (if any), overcollateralizing and hedging the Transition Bonds as more fully described herein ("Ongoing Transition Bond Costs") (such Capital Reduction Costs, Upfront Transaction Costs and Ongoing Transition Bond Costs all being hereinafter referred to as "Bondable Stranded Costs"). The Petitioner has also requested approval of the formula for the calculation and adjustment of the Transition Bond Charge and MTC-Tax related thereto.

Petitioner has further requested that pursuant to this Financing Order, Petitioner be granted authority to recover through the sale of the Bondable Transition Property up to $2.525 billion of its Bondable Stranded Costs, including Capital Reduction Costs and Upfront Transaction Costs. Ongoing Transition Bond Costs will be recovered by the SPE through the assessment and collection of the Transition Bond Charge, a separate, nonbypassable charge assessed and

collected from all customers of Petitioner and/or any successor electric public utility operating within Petitioner's existing service territory, except as provided in Section 28 of the Act.

Petitioner states that the principal asset to be used to secure the Transition Bonds is the Bondable Transition Property. Petitioner points out that pursuant to Section 16 of the Act, this Financing Order and the Transition Bond Charges are irrevocable upon this Financing Order's becoming effective pursuant to Section 19 of the Act, and this Financing Order cannot be rescinded, altered, repealed, modified or amended by the Board or any other governmental entity; nor impaired by the State of New Jersey, as pledged in Section 17 of the Act.

Petitioner states that it will form a non-utility, bankruptcy-remote special-purpose entity (the "SPE"), wholly owned by Petitioner, and will provide the initial capitalization of such SPE. The Petition provides that Petitioner will sell the Bondable Transition Property directly or through an assignee (as defined in the Act) to the SPE in a transaction which, under Section 23 of the Act, will be a legal true sale and absolute transfer to such SPE, and that the SPE will constitute a financing entity for purposes of the Act.

To raise the funds to pay the purchase price of the Bondable Transition Property to Petitioner, the SPE will issue and sell Transition Bonds, the net proceeds of which bonds will be remitted to Petitioner. The SPE will issue and sell the Transition Bonds in a negotiated public offering as asset-backed securities ("ABS"). Petitioner states that all prior securitization of utility stranded costs in other jurisdictions have been structured as ABS and sold on a negotiated basis and the expertise of an underwriter is critical to the structuring, pricing and marketing of securities in the ABS market. Petitioner notes that in states such as Massachusetts where competitive bidding requirements would otherwise be applicable, bidding of stranded cost securitization transactions has either been waived or not required to access the ABS

market For these reasons, Petitioner and Lehman Brothers, its lead underwriter, believe that a negotiated sale will assure that the Transition Bonds will receive the highest possible rating and will obtain the lowest possible interest and transaction costs, ensuring compliance with the requirements of Section 14(b)(4) of the Act which provides that Petitioner's customers pay the lowest transition bond charges consistent with market conditions at time of pricing and the terms of this Order.

Petitioner states that all of the assets of the SPE, including, without limitation, the Bondable Transition Property and the other collateral of the SPE (the "Other SPE Collateral"), will be pledged as collateral to secure the Transition Bonds. Petitioner notes that the Other SPE Collateral may include (without limitation) the rights of the SPE under the Transition Bond Transaction documents, including a sale agreement by which the SPE acquires the Bondable Transition Property and receives certain indemnification from the Petitioner, a servicing agreement by which Petitioner or any successor in that capacity acts as servicer of the Bondable Transition Property (the "Servicer"), an administration agreement by which the SPE will be administered, and various trust accounts of the SPE.

While the Board is requested to approve Transition Bonds with scheduled amortizations not exceeding 15 years at issuance in accordance with Section 14 of the Act, it is also requested to approve stated maturities of up to two additional years in order to reduce overcollateralization requirements and enhance the prospects of securing the highest possible credit rating for the Transition Bonds. Petitioner states that these objectives should result in lower interest costs and, thus, savings to ratepayers.

b. Recovery of Upfront Transaction Costs

In order to issue Transition Bonds to achieve net savings for the benefit of its customers, Petitioner will incur transaction costs. Based on the currently estimated initial offering of $2.525 billion of Transition Bonds, Petitioner has

estimated that such amount will include Upfront Transaction Costs of approximately $25 million which may vary, in part, based on the factors described below. Petitioner states that these Upfront Transaction Costs will include, among other items, the underwriting spread, rating agency fees, financial advisory fees, accounting fees, SEC registration fees, printing and marketing expenses, trustees' fees, legal fees, the servicing set-up fee and the administrative cost to set up the SPE. The Petitioner has requested authority to recover the Upfront Transaction Costs out of the proceeds of sale of the Transaction Bonds and to include such costs as Bondable Stranded Costs, the right to recover such amounts to constitute a portion of the Bondable Transition Property. Petitioner indicates that to the extent payment of any Upfront Transaction Costs is required prior to the issuance of the Transition Bonds, such costs will be paid by Petitioner and reimbursed from the proceeds of the Transition Bonds.

c. Recovery of Capital Reduction Costs

Petitioner has requested recovery of the Bondable Stranded Costs of retiring Petitioner's debt or equity, or both, including but not limited to, accrued interest and accrued preferred dividends, premium and other fees, costs and charges relating thereto out of the proceeds of the sale of the Transition Bonds and to include such costs as Bondable Stranded Costs, the right to recover such amounts to constitute a portion of the Bondable Transition Property

d. Recovery of Ongoing Transition Bond Costs

Petitioner has requested recovery of Ongoing Transition Bond Costs through the Transition Bond Charge. Petitioner states that the primary Ongoing Transition Bond Costs are principal and interest on the Transition Bonds, and that other such costs include principally the servicing fee of .05% of the initial principal amount of the Transition Bonds (the "Servicing Fee") paid to Petitioner, as the Servicer (as defined below), or such higher fee as may be payable to a successor Servicer, and the ongoing cost of credit enhancement,

overcollateralization and hedging arrangements, if any. Petitioner states that there will also be a small amount of additional, ongoing costs associated with the Transition Bond Transaction, such as the administration fee, legal and accounting fees, directors or manager fees, rating agency fees, trustee fees and other costs of operating the SPE. Petitioner states that these costs should be included as Bondable Stranded Costs to be recovered through the Transition Bond Charge in accordance with Section 14 of the Act, and the right to recover these costs as Bondable Stranded Costs will be a portion of the Bondable Transition Property.

e. Approval of Final Terms and Conditions: Transition Bond Transaction

Petitioner states that prior to the pricing of the Transition Bonds, it will cooperate with and provide such information to the Board's Designee as is reasonably requested in order that the Designee may make the certifications required below. To assist the Designee in making his required certifications, upon the pricing of the Transition Bonds, the Petitioner will file with the Board's Designee a Pricing Advice Certificate (see Appendix D to this Financing Order). This document may be based upon the advice of the Petitioner's lead underwriter and will certify, in substance, that the structuring and pricing of the Transition Bonds (including any hedging arrangement priced at the time of pricing of the Transition Bonds as described below), assures that the Petitioner's customers pay the lowest transition Bond Charges consistent with then current market conditions and the terms of this Financing Order.

Petitioner also states that prior to the approval of pricing of the Transition Bonds (including any hedging arrangement priced at the time of the pricing of the Transition Bonds), the Designee will receive a certificate from Petitioner's lead underwriter substantially to the effect that, in its judgment, the structuring and pricing of the Transition Bonds (and any such hedging agreement) is reasonable in the light of current market conditions. Upon the filing of the Pricing Advice

Certificate (at the time of the pricing of the Transition Bonds and any such hedging arrangement), Petitioner requests that the Board's Designee will file with the Board a certificate (see Appendix A hereto) to the effect that the structure and pricing of the Transition Bonds (and any such hedging arrangement) assures that Petitioner's customers pay the lowest Transition Bond Charges consistent with market conditions and the terms of the Financing Order, and approving the terms and conditions of the Transition Bonds (and any such hedging arrangement), including scheduled amortization up to 15 years and stated maturities of up to two additional years.

Petitioner states that payments on the Transition Bonds will be semiannual or quarterly, depending upon rating agencies, tax considerations and market conditions at the time of Transition Bond pricing, and that debt service on the Transition Bonds will be scheduled upon issuance so that the sum, for each annual period, of (i) the Periodic Payment Requirements (defined below) and (ii) the associated MTC-Tax collections will result in substantially equal Transition Bond Charges.

Petitioner states that one or more classes of the Transition Bonds may be issued as variable rate instruments which are fixed or capped through the execution of an interest rate exchange agreement, an interest rate cap agreement or similar hedging arrangement. If, at the time of pricing of the Transition Bonds, the Petitioner and its lead underwriter determine that such a hedging arrangement is expected to result in a lower interest cost on such classes of bonds or on all classes of bonds taken as a whole, the hedging arrangement will be described in the Pricing Advice Certificate (see Appendix B hereto) and is subject to approval by the Designee in the Issuance Certificate. Any counterparty to such a hedging arrangement must have a credit rating consistent with achieving the highest possible ratings on the Transition Bonds.

Petitioner has also advised the Board's Staff and the Board's financial advisor that it may be advantageous, under

certain market conditions, to enter into a hedging arrangement in order to attempt to synthetically fix or cap interest rates on the Transition Bonds in advance of the actual pricing of the Transition Bonds. Petitioner also stated that the implementation of a hedging arrangement in advance of the pricing of the Transition Bonds should only be undertaken if Petitioner determines and certifies to the Board Designee, that such an arrangement is appropriate to assure that Petitioner can achieve the required rate reductions through securitization and to protect ratepayers against future interest rate increases.

Because there is no market for hedging Transition Bonds directly, Petitioner has advised Board Staff that any hedging arrangement may not provide a "perfect" hedge against interest rate volatility. Petitioner has further advised Board Staff that in order to hedge the risk of changes in the interest rates prior to the pricing of the Transition Bonds, it is necessary to make reference to rates and spreads in other markets, including the United States Treasury Bond market and the interest rate swap market. Petitioner has further advised that it may itself enter into hedging arrangements with one or more third party counterparties and enter into a back-to-back hedging arrangement with the SPE.

Petitioner has also advised that payments from or to one or more of the third party counterparties with whom Petitioner or the SPE enters into a hedging arrangement prior to the pricing of the Transition Bonds in order to fix or cap interest rates shall be treated as follows: If a payment is received by Petitioner and/or the SPE from the third party counterparties, Petitioner and/or the SPE would retain such amount (or an estimate of such amount if the exact amount is unknown at the time of pricing of the Transition Bonds) after any current income taxes and the principal amount of the Transition Bonds will be correspondingly reduced. In the event the actual payment received from the hedging arrangement at the time of issuing the Transition Bonds does not equal the amount by which the Transition Bond issuance was reduced,

the difference would be recovered by the Petitioner and/or SPE or credited to ratepayers as an adjustment to Ongoing Transaction Costs and reflected in the initial Transition Bond Charge.

If a payment must be made by Petitioner and/or the SPE to the third-party counterparties, such payment, or any portion thereof, net of tax, may be included in Transaction Costs and securitized provided the total amount securitized, (i.e., the $2.4 billion of net-of-tax stranded costs, plus Capital Reduction and Upfront Transaction Costs expressed on a net of tax basis to the extent they are deductible when incurred) [illegible] $2.525 billion. Alternatively, at the discretion of the Petitioner and/or SPE, the payment to any counterparty by the SPE may be amortized over the term of the Transition Bonds and, together with interest determined at the weighted average yield on the Transition Bonds, included as part of Ongoing Transaction Costs and remitted to Petitioner or another counterparty.

Petitioner suggests that any periodic payment of Ongoing Transaction Costs by SPE to Petitioner related to such a hedging arrangement may be made subordinate to the payments of Transition Bonds.

Petitioner has requested that if a hedging arrangement is entered into prior to the pricing of the Transition Bonds, the hedging arrangement will be approved by the Designee by the execution and delivery to the Petitioner of a Designee Confirmation which will describe and approve the structuring and pricing of the hedging arrangement. Upon the delivery to the Petitioner of such Designee Confirmation, the terms of any hedging arrangement, including the terms of the Transition Bonds which are assumed as part of such hedging arrangement, shall be final and incontestable, and shall not be subject to further review or approval by the Designee upon the pricing of the Transition Bonds. The Designee

Certification shall be filed by the Designee with the Board at the same time the Designee files the Designee Certification approving the pricing of the Transition Bonds. The Designee shall also approve and certify the terms for the termination of any hedging arrangement.

Not later than five business days after the issuance and sale of the Transition Bonds, Petitioner will confirm to the Board, in an "Issuance Advice Letter" substantially in the form of Appendix B to this Financing Order, the actual interest rates on the Transition Bonds, the schedule of payments of principal and interest on the Transition Bonds and the expected amortization schedule and the initial Transition Bond Charge and MTC-Tax, which will be calculated using the formula described in Exhibit A of the Petition. The Issuance Advice Letter will also include a calculation of present value savings to customers using the methodology employed in Appendix H hereof, applied to the actual structure and terms of Transition Bonds. Pursuant to Section 15(a)(2) of the Act the initial Transition Bond Charge and MTC-Tax will become effective when the Issuance Advice Letter is filed, without further action by the Board.

f. Transition Bond Charge

Pursuant to Section 15 of the Act, Petitioner states that Transition Bond Charges will be set periodically by formula at a level intended to recover the sum of the Ongoing Transition Bond Costs, including, without limitation: (1) the principal of the Transition Bonds projected amortization in accordance with the expected before the time of schedule approved by the Designee at or on the Transition pricing of the Transition Bonds and financing Order; (2) Bonds authorized by the Board in this Financing the costs of operating and administering the SPE; (3) the costs of servicing the Transition Bonds, including servicing and trustee fees, expenses and indemnities substantially as described in the SPE filing; (4) amounts required to fund or replenish the overcollateralization account in accordance with the overcollaterization schedule approved by the Board's Designee at pricing of the Transition Bonds; (5) the

reimbursement of any amounts required to be drawn from the SPE's capital account pursuant to the Bond Indenture, substantially as described in the SEC filing; and (6) the ongoing expenses of any other credit enhancement or hedging arrangements (the required periodic payment of all such amounts, including deficiencies on past due amounts for any reason, is herein called the "Periodic Payment Requirement" and the total of such requirements until paid in full, the "Total Payment Requirements").

In Attachments A3 and A4 to Exhibit A of the Petition, the Petitioner describes the formula by which it proposes to periodically establish and adjust the Transition Bond Charge and the MTC-Tax. Petitioner states that the Transition Bond Charges and the MTC-Tax will be set and adjusted based on assumptions described in Attachments A3 and A4 to Exhibit A of the Petition, as those assumptions are adjusted periodically in accordance with Attachments A3 and A4 to Exhibit A. These assumptions include, but are not limited to, sales forecasts, customer payment and charge-off patterns, defaults by third party suppliers (as described herein), the Periodic Payment Requirement (including without limitation the timely payment of principal of and interest and acquisition or redemption premium on, the Transition Bonds) and tax rates. In Attachment A2 to Exhibit A of the Petition, Petitioner projected the initial Transition Bond Charge and the MTC-Tax using the formula described in Attachments A3 and A4 to Exhibit A to the Petition and assuming the Periodic Payment Requirements as shown in Revised Attachment Al to Exhibit A of the Petition which is attached hereto as Appendix I.

Petitioner requests that the Transition Bond Charges shall remain in effect until the SPE owner of the Bondable Transition Property has received Transition Bond Charges sufficient to discharge the Total Payment Requirements.

Petitioner states that each customer's monthly bill will contain a line item which includes both the Transition Bond Charge and MTC-Tax and will note in text or contain a

footnote that a portion of such combined charge represents Bondable Transition Property being collected on behalf of the SPE as owner of Bondable Transition Property.

g. Periodic Adjustments to the Transition Bond Charge and MTC-Tax

The Board is required by Section 15 of the Act to make mandatory periodic adjustments (the "True-Up Mechanism") to the Transition Bond Charge upon petition of Petitioner, its assignee or financing entity, to ensure receipt of revenues sufficient to satisfy the Periodic Payment Requirement. Under the Act, mandatory periodic adjustments of Transition Bond Charges must be made at least annually. As described earlier, such adjustments will be based upon a formula described in Attachments A3 and A4 to Exhibit A of the Petition. Each such adjustment shall be formula-based, shall be in the amount required to ensure receipt of revenues sufficient to satisfy the Periodic Payment Requirement, including, without limitations the timely payment of principal of, and interest and acquisition or redemption premium on, the Transition Bonds. As Servicer, Petitioner states that it will be responsible for filing with the Secretary of the Board documentation for any necessary periodic adjustments (see Appendix C hereto). (Petitioner, as Servicer under the Servicing Agreement, described below, and any successor to Petitioner as servicer are herein referred to as the "Servicer".)

Petitioner has requested authorization to file for adjustments of the Transition Bond Charge, as often as quarterly, as determined necessary by Petitioner for credit rating purposes. Each such periodic adjustment shall become effective 30 days after filing thereof with the Board absent a determination by the Board of manifest error (i.e. an arithmetic error evident on the face of such filing). Under Section 15 of the Act, the Servicer shall propose such adjustments in a filing with the Secretary of the Board at least 30 days in advance of the date upon which it is requested to be effective. The proposed adjustment shall become effective on an interim basis on such requested effective date, in the

absence of a Board Order to the contrary. Under Section 15 of the Act, in the absence of a Board order to the contrary, the periodic adjustment shall become final 60 days after the filing. The Petitioner has requested that the Board confirm that the periodic adjustment will become final absent a finding by the Board of manifest error as defined above in the application of the adjustment formula approved herein. The Petitioner asserts that this standard is consistent with the other provisions of Section 15 which require that the periodic adjustment be implemented to ensure "timely payment" of, among other things, principal of and interest and acquisition or redemption premium on the Transition Bonds. Petitioner further asserts that in order to achieve the highest possible credit ratings on the Transition Bonds and, thus, the lowest costs to ratepayers, the periodic adjustments must be made final based upon this objective standard.

As provided in the Restructuring Order, the MTC-Tax is subject to periodic review and adjustment Petitioner proposes that the adjustment is to be made as often as quarterly to reconcile the income taxes recovered to the income taxes required to be paid on the taxable net revenue as calculated in accordance with Exhibit A to the Petition from the Transition Bond Charges and the MTC-Tax. Petitioner requests that the reconciliation be made at the same time and substantially in the same manner as the True Up Mechanism for Transition Bond Charges in order to ensure receipt of revenues sufficient to assure that the MTC-Tax is not being underrecovered or overrecovered. Upon petition of Petitioner, the MTC-Tax will be adjusted based upon assumptions described in Attachments A3 and A4 to Exhibit A to the Petition, as those assumptions are adjusted from time to time in accordance with such Attachments A3 and A4. No delay in the mandatory adjustment or failure to make any such adjustment of the MTC-Tax will in any way adversely affect the mandatory periodic adjustment of the Transition Bond Charge described in the preceding paragraph.

The Petitioner has also requested authority for the Servicer to make "non-routine" filings for adjustments to the formula described in Exhibit A of the Petition to assure timely payment of the Total Payment Requirements, including principal and interest on the Transition Bonds. These filings would be made to accommodate changes to the formula described in Attachments A3 and A4 to Exhibit A, if deemed appropriate by the Servicer to protect bondholders to remedy a significant and recurring variance between actual and expected Transition Bond Charge collections. Any such filing would be required to be made with the Secretary of the Board at least 90 days prior to the proposed effective date, and would be subject to Board approval.

h. Remittance of Transition Bond Charges

Petitioner states that the Servicer will employ a methodology to remit to the Transition Bond trustee ("Bond Trustee") the Transition Bond Charge as described in the Petition and in Exhibit C thereto. Petitioner notes that the Servicer will receive the Transition Bond Charge collections daily and may, as authorized by Section 15 of the Act, commingle Transition Bond Charge collections with other customer payments until the remittance date to the Bond Trustee.

Petitioner states that collections from each customer will be applied first to sales taxes (which Petitioner will collect as trustee for the State and not for its own account or that of the SPE, and which are not "charges" for purposes of the following allocations), then to charges in arrears, if any, and then to current charges. With respect to each billing period, partial payments of charges will be allocated to the Transition Bond Charge, to the MTC-Tax and to the Petitioner's other charges, pro rata, based on the proportions that the Transition Bond Charges, the MTC-Tax and the Petitioner's other charges bear to the total charges collected. Partial payments of Transition Bond Charges will be allocated to the SPE (as owner of the Bondable Transition Property), pro rata, based on the proportions that the Transition Bond Charge

representing the Bondable Transition Property and any transaction bond charges established pursuant to other subsequent financing orders bear to the total Transition Bond Charges collected. Subsequently, the Petitioner advised the Board that it would file, as part of its required Unbundling Filing of August 1, 2002, data showing the impact of the timing of customer payments of Transition Bond Charges to the Petitioner versus payments by the Petitioner as Servicer to the transition bond trustee. This data shall include a calculation of customer daily remittances, timing of remittances to the bond trustee and the short-term interest rate then applicable to determine the amount of "float" income earned by the Petitioner in its capacity as Servicer. If the Board determines in its review of this filing, that the Petitioner retained revenue over and above its servicing fee, it may calculate such retained revenue, and impute interest thereon, in determining fair and reasonable rates going forward from the date of its review.

Petitioner says that the Bond Trustee will apply Transition Bond Charge collections substantially as described in the SEC filing. Thus, investment income earned on the trust accounts held by the Bond Trustee may be used to satisfy current Periodic Payment Requirements. Investment income on the capital account not used currently for these purposes will be released to the SPE. Any earnings in excess of required balances in such trust accounts (other than the capital account) will reduce the Transition Bond Charges through the True-Up Mechanism.

Upon retirement of all outstanding Transition Bonds and payment of all Ongoing Transition Bond Costs, Petitioner states that any remaining amounts held by the Bond Trustee will be released to the SPE and that Petitioner's equity in the SPE may be distributed to Petitioner, Petitioner also says that it will credit an amount equal to any overcollected Transition Bond Charges, less any amount of any unpaid MTC-Tax charges and any amount that was withdrawn and not

replenished to the SPE's equity, to its customers against its distribution charges.

i. Credit Enhancement

The Transition Bond documents will incorporate the True-Up Mechanism authorized by Section 15 of the Act as described above and overcollateralization amounts or other means of credit enhancement as required by the rating agencies or taxing authorities.

The Petitioner explains that the Transition Bond Charge will be set to collect an overcollateralization amount over time in addition to the principal (in accordance with the expected amortization schedule) and interest payable on the Transition Bonds and the other Ongoing Transition Bond Costs. The Petitioner states that the overcollateralization amount necessary for the Transition Bonds will be determined just prior to pricing, after consultation with the rating agencies and tax authorities, and will be subject to the approval of the Designee at the time of pricing of the Transition Bonds. As with other components of the Transition Bond Charge, the overcollateralization component will be incorporated into each periodic adjustment to the extent necessary using the True-Up Mechanism.

j. Formation of SPE

The SPE will be a wholly-owned, non-utility subsidiary of the Petitioner and is expected to be a limited liability company, and will be managed substantially as described in the SEC Filing.

k. Bondable Transition Property

Under Section 3 of the Act, the Petitioner's Bondable Transition Property (the "Bondable Transition Property") will consist of (a) the irrevocable right to charge, collect and receive, and be paid from collections of the Transition Bond Charge the amount necessary to provide for the full recovery of Total Payment Requirements, (b) all rights of Petitioner under this Financing Order, including without limitation all

rights to obtain periodic adjustments of the Transition Bond Charge pursuant to the True-Up Mechanism and (c) all revenues, collections, payments, money and proceeds arising under, or with respect to, all of the foregoing.

Pursuant to Sections 16 and 22 of the Act, upon receipt of payment for the Bondable Transition Property by the Petitioner from the SPE, the Bondable Transition Property will constitute a vested presently existing property right and will continuously exist as property for all purposes as provided in the Act and the Financing Order, whether or not the revenues and proceeds arising with respect thereto have accrued and notwithstanding the fact that the value of the property right may depend upon eonsumers using electricity or the Servicer performing services; and the validity of any sale, assignment or other transfer of the Bondable Transition Property will not be defeated or adversely affected by the commingling by Petitioner of revenues recovered from amounts charged, collected and received on account of the Bondable Transition Property with other funds of Petitioner.

l. Sale of Bondable Transition Property to SPE

Petitioner requests the Board to approve the sale of the Bondable Transition Property to an SPE in one or more transactions which, under Section 23 of the Act, will be a legal true sale and absolute transfer to the SPE, notwithstanding any other characterization for tax, accounting or other purposes. The Petitioner explains that the SPE will have all of the rights originally held by Petitioner with respect to the Bondable Transition Property, including the right to exercise any and all rights and remedies to collect any amounts payable by any customer in respect of the Bondable Transition Property, which includes the right to direct Petitioner or any successor electric public utility to shut-off electric power to the extent permitted in accordance with law and any applicable regulations.

The Petitioner notes that the agreement in connection with the sale and transfer of the Bondable Transition Property

to the SPE will include representations and warranties with respect to, among other things, the validity of this Financing Order, the Bondable Transition Property and the title thereto, and provide specific covenants, indemnities and/or repurchase obligations in connection with such transfer for the benefit of the holders of Transition Bonds.

m. Issuance of Transition Bonds

The Board is requested to approve the issuance of Transition Bonds by the SPE. The Petitioner states that the Transition Bonds will, by their terms, be recourse only to the SPE's credit and assets, and will be secured by a pledge of all of the rights, title and interest of the SPE in its Bondable Transition Property and Other SPE Collateral.

n. Nonbypassable Transition Bond Charge and MTC-Tax

The Transition Bond Charge and MTC-Tax are nonbypassable and will be assessed against and collected from all customers of the Petitioner or any successor electric public utility, except as provided in Section 28 of the Act, within the Petitioner's service area as of the date of the Petition until the Total Payment Requirements are discharged in full. Pursuant to Section 18 of the Act, the Transition Bond Charge will apply equally to each customer, regardless of class, based on the amount of electricity delivered to the customer through the transmission and distribution system of Petitioner or any successor electric public utility that takes over all or a portion of the Petitioner's service area, including electricity sold to customers by any third party supplier, as described below.

o. Third Party Suppliers

The Petitioner states that billing, collection and remittance of Transition Bond Charges by a third party supplier ("TPS") may increase the risk of shortfalls in Transition Bond Charge and MTC-Tax collections by exposing the cash flow to potential interruption due to the

default, bankruptcy or insolvency of the TPS. It notes that this risk of interruption will increase risks to investors and ratepayers, potentially increasing the required credit enhancement or reducing the credit rating and increasing the rate of interest on Transition Bonds. The Petitioner concludes that such TPS billing may increase the Transition Bond Charge and MTC-Tax component resulting from interruption or delay in payment.

In order to mitigate against these risks, satisfy rating agency concerns and reduce the cost to ratepayers, Petitioner requests that any TPS should be required to comply with certain billing, collection and remittance procedures and information access requirements described in the Petition and comparable to those in effect in other states in which stranded cost securitizations have been effected. The Petitioner indicates that these requirements are largely derived from rating agencies' criteria, as described in Exhibit D of the Petition.

p. Servicing

Petitioner states that it will enter into a servicing agreement with the SPE to perform servicing functions on behalf of the SPE with respect to the Bondable Transition Property, which, servicing engagements, including servicing compensation, will be substantially as described in the SEC filing.

q. MTC-Tax Component Recoveries

Pursuant to the Restructuring Order, Petitioner has been authorized to recover fully the MTC-Tax Component through the ongoing collection of the MTC-Tax until full payment of principal and interest of the Transition Bonds. Pursuant to the Restructuring Order, the MTC-Tax is subject to mandatory periodic adjustment (at the same time and substantially in the same manner as the Transition Bond Charges) to reconcile the MTC-Tax collections with the Federal Income and State Corporate Business taxes required to be paid on the taxable revenue as calculated in accordance with Exhibit A to the

Petition from the Transition Bond Charge and the MTC-Tax. The Petitioner will maintain separate accounting for the MTC-Tax collections and the Bondable Transition Property. As provided in Section 23(a)(4) of the Act, Petitioner's right to recover the MTC-Tax by Petitioner will in no way affect or impair the legal true sale and absolute transfer of the Bondable Transition Property to the SPE, or otherwise affect the legal rights and attributes of the Bondable Transition Property under the Act.

3. RATEPAYER BENEFITS

Based upon its most recent rate case, Petitioner has a pre-tax rate of return of 14.23%, which is equivalent to an after-tax rate of return of 8.42%. Based upon the structure, methodology and assumptions as set forth in the letter of Petitioner to the Board dated September 2, 1999 ("September 2, 1999 Letter") and in Appendix H hereof, Petitioner represents that, as proposed, the Transition Bond Transaction will result in net present value savings over the term of the Transition Bonds and greater rate reductions than would be required to recover the recoverable stranded costs if Transition Bonds were not issued. Petitioner states that the actual net present value savings and rate reductions resulting from the Transition Bond Transaction will depend upon the actual amount of Transition Bonds issued, market conditions at the time of the pricing of the Transition Bonds (and any hedging arrangement), and the actual amount of Bondable Stranded Costs. The structure, pricing, terms and conditions of the Transition Bonds (and any hedging arrangement) will be subject to approval by the Designee pursuant to the delegation of authority in this Financing Order. In its Issuance Advice Letter filed with the Board following the pricing of the Transition Bonds, the Petitioner will present a calculation of the expected net present value savings and rate reductions resulting from issuance of the Transition Bonds using the methodology described in the September 2, 1999 Letter and based upon the findings in the Restructuring Order and the rate reductions prescribed in the Act.

4. USE OF PROCEEDS

The Petitioner states that the proceeds, net of underwriting discount, from the sale of Transition Bonds will be remitted to Petitioner in consideration of Petitioner's sale of Bondable Transition Property. In accordance with Section 14 of the Act, Petitioner will use such proceeds, after payment of Upfront Transaction Costs, to reduce its $2.4 billion net of tax bondable stranded costs through the retirement of debt or equity, or both (including transactions completed after the date of this Order).

5. RATEPAYER ADVOCATE'S COMMENTS

As noted in the procedural history set forth hereinabove, by letter memorandum dated August 11, 1999, the Ratepayer Advocate ("Advocate") filed comments in response to Petitioner's filing in this matter. The Advocate's primary argument was that evidentiary hearings were required given the nature of the issues in dispute in this matter. At its public meeting dated August 24, 1999, memorialized by Board Order dated September 17, 1999, the Board ruled that it would not be necessary to hold evidentiary hearings with regard to the issues raised by the Advocate's memorandum except that it held two issues, issues XI and XII, in abeyance until further review. The Board also referred to correspondence of Petitioner dated August 24, 1999 setting forth proposals for resolving issues IX and X. The Board determined that no hearings were necessary with regard to issues IX and X and indicated it anticipated that the Petitioner's proposals with regard to these issues would adequately address the Ratepayer Advocate's concerns. We note that the Ratepayer Advocate has submitted no further correspondence with regard to Petitioner's proposals on issues IX and X, nor any other comments with regard to the Restructuring Order.

1. The Advocate argues in issue IX of its memorandum that Petitioner's proposal does not adequately take account of interest earned (the "float") by Petitioner on

monies held between the time Petitioner receives customer payments and the time it remits said payments to the SPE, and that the failure to flow this interest back to customers is contrary to the Act's mandate calling for the lowest possible Transition Bond Charges with all savings passed along to customers. The Advocate also argues that given the lack of certainty as to when Petitioner will file its next rate case, it is not a solution to wait until Petitioner files a base rate case. The Advocate concludes that the Board should order that Petitioner flow back to ratepayers the benefit of the float accruing between the dates Petitioner collects the Transition Bond Charges and related MTC-Tax and the date the money collected is remitted to the SPE.

As noted above, by letter dated August 24, 1999, Petitioner filed with the Board an alternative proposal regarding how it will handle the above referenced float. This proposal is set forth in Point IX of Attachment A to Petitioner's August 24, 1999 letter, and is as follows:

> The Company is directed to file, as part of its required Unbundling Filing of August 1, 2002, data showing the impact of the timing of customer payments of transition bond charges to PSE&G versus payments by PSE&G as Servicer to the transition bond trustee. This data shall include a calculation of customer daily remittances, timing of remittances to the bond trustee and the short-term interest rate then applicable to determine the amount of "float" income earned by PSE&G in its capacity as Servicer. If the Board determines in its review of this filing, that PSE&G retained revenue over and above its servicing fee, it may calculate such retained revenue, and impute interest thereon, in determining fair and reasonable rates going forward from the date of its review. [Attachment A to Petitioner's letter filed August 24, 1999]

After review, the Board FINDS that the foregoing proposal is a reasonable resolution of issue IX of the

Advocate's memorandum. Allowance for consideration of the impact of the float on rates in the unbundling filing of August 1, 2002 provides a reasonable means of examining any rate treatment which may be appropriate because of the float.

2. The Advocate argues in issue X of its memorandum that Petitioner's proposal to include in transaction costs the recovery of accrued interest on redeemed debt and accrued dividends on redeemed preferred equity amounts to a double recovery for Petitioner because ratepayers are already fully compensating investors through current base rates. The Advocate concludes that the Board should state in its Order that accrued interest and dividends are costs that Petitioner has already collected in base rates, and that these costs should be excluded from transaction costs.

Point X of Attachment A of Petitioner's August 24, 1999 letter filing contains Petitioner's proposed resolution of issue X, which states as follows:

> As reflected in the Company's Reply of August 13, 1999 to Point X of the Ratepayer Advocate's Memorandum of August 11, 1999, accrued interest on bonds and accrued dividends on preferred securities will be calculated from the time transition bonds are issued until the time the related bonds/preferred stock is retired/redeemed. Only this amount of accrued interest and dividends will be included in the estimated $125 million of transaction costs to be recovered through the transition bond issuance. If the Company's transaction costs are below $125 million in the aggregate, the excess will be applied as a reduction of the Company's SBC deferred balance.
>
> [Attachment A to Petitioner's letter filed August 24, 1999]

After review, the Board finds that the above proposal provides a reasonable resolution of issue X of the Advocate's

Memorandum. As of the date of th
Transition Bonds the accrued interest and
will no longer effectively be recove
Therefore, any charge to customers a
issuance of the Transition Bonds will not
charge.

3. Issue XI of the Advocate's Me
the estimated lag caused by a delay i
revenues and the associated over billing to
The Advocate argues that Petitioner's tre
costly to ratepayers because the lag i
assumed to exist for 15 years and the ove
amortized accordingly. In support of
Advocate argues that because current re
sufficiently high to cover the cost of Pet
are, therefore, already provided for in rat
collection associated with the lag is in fact
customers. The Advocate suggests that
perceived lag is to eliminate the over bill
adjustment through Petitioner's first year r

In its Reply to the Advocate's M
August 13, 1999, Petitioner argues that the
requirements of securitization demand that
available from the Transition Bond Char
debt for the full term of the Transition B
cash flow is important and must be s
collection lags and uncollectables. Petition
while it is less apparent in the years follow
collection lags continue for the term of
regard to the Advocate's proposed so
Petitioner to include an adjustment for th
collection lag in the true-up mechanism, Pet
such an approach would put stress on the A
Transition Bonds because the initial char
established at a level sufficient to servi
Bonds without first utilizing the tru
Petitioner also argues that the Advocate's

e issuance of the
preferred dividends
ed in base rates.
of and after the
constitute a double

norandum concerns
the collection of
correct for this lag.
tment of this lag is
the first year is
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ue-up mechanism.

emorandum, dated
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sufficient cash be
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Bonds. Therefore,
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AAA rating on the
rge would not be
ce the Transition
e-up mechanism.
proposal does not

really solve the problem because the true-up mechanism would increase the customer charge in a similar fashion to that proposed by Petitioner.

As a preliminary matter, it appears after a review of the arguments set forth above and an examination of the record regarding the billing lag issue, that an evidentiary hearing is not necessary for the Board to rule on this issue. It is clear from the record and from the arguments presented that there is indeed a billing lag for the term of the Transition Bonds which must be covered by revenues sufficient to service the Transition Bonds. See, Section 15(b) of the Act,. The only remaining issue is how best to account for the lag in customer payments through the Transition Bond Charges and related charges. Because Petitioner's proposal adequately accounts for the lag through the Transition Bond Charge calculation shown in Attachment A-2 to the Petition and through Petitioner's agreement to credit any overcollected Transition Bond Charges to its customers, with the added benefit of fully funding the Transition Bonds, the Board FINDS Petitioner's approach to be reasonable.

4. With regard to issue XII, the Advocate argues that Petitioner has not provided back-up documentation to support a servicing fee of 0.05% for collecting the Transition Bond Charges payments from customers and transmitting same to the SPE. The Advocate also argues that while it may be true that it would cost considerably more for an outside entity to do the servicing, the cost to Petitioner is only an incremental service without the need for a newly created billing and collection procedure. The Advocate concludes that the servicing fee must be demonstrated and justified and that the Board should at least cap the servicing fee at no more than 0.05% for the first year, with a review of the fee a year from the beginning date of the collection of the Transition Bond Charges.

Petitioner argues in its August 13,1999 Reply that the 0.05% servicing fee represents Petitioner's best estimate of the costs to bill, collect, account for and remit to the SPE,

along with the cost to make the various changes to the accounting system and produce various reports for the trustee, bondholders, rating agencies and the Board.

Petitioner also argues that the servicing fee has been calculated on an arms length basis to protect the bankruptcy remote nature of the transaction. Petitioner asserts that the fee is also one of the lowest fees used by other utilities that are presently servicing securitization requirements. Finally, Petitioner notes that the servicing will be adjusted in its next electric base rate proceeding.

After review, the Board FINDS that the proposed servicing fee of 0.05% is as low as any servicing fee charged by any other utility in the nation in connection with a securitization of comparable size and complexity and is, therefore, reasonable. Moreover, the Board will review in Petitioner's next electric base rate proceeding such servicing compensation to assure that the servicing fee is market-based and provides a reasonable return.

6. FINDINGS WITH RESPECT TO PETITION

Based on the record of proceedings in this matter and those related to the Restructuring Order, the Petition and the provisions of the Act and the Restructuring Order, the Board **HEREBY FINDS:**

Recovery of Costs

1. As approved by the Board in BPU Docket Nos. E097070461, E097070462 and E097070463 (which approval constitutes the "Restructuring Order"), Petitioner is authorized to recover up to $2.940 billion net of tax stranded costs.

2. Petitioner's net of tax stranded costs to be securitized approved in the Restructuring Order are $2.4 billion plus an additional amount of up to $125 million for transaction costs are recoverable through the Transition Bond

Charge. In addition, the Restructuring Order permits the recovery of the Federal Income and State Corporate Business taxes related to securitization (i.e., the MTC-Tax Component), which are reflected in the grossed-up revenue requirement number associated with the $2.4 billion in net of tax stranded costs.

3. The Petitioner's Bondable Stranded Costs include: (1) the Capital Reduction Costs, (2) the Upfront Transaction Costs and (3) the Ongoing Transition Bond Costs.

Mitigation

4. In the Restructuring Order the Board found, in accordance with Section 14(b)(1) of the Act, that Petitioner has taken reasonable measures to date, and has the appropriate incentives or plans in place to take reasonable measures, to mitigate the total amount of its stranded costs.

Necessity of Securitization

5. In the Restructuring Order the Board found, in accordance with Section 14(b)(2) of the Act, that Petitioner will not be able to achieve the level of rate reduction deemed by the Board to be necessary and appropriate pursuant to the provisions of Sections 4 and 13 of the Act absent the issuance of the Transition Bonds.

Tangible Benefits

6. In accordance with Section 14(b)(3) of the Act, so long as the weighted average yield on the Transition Bonds is less than 9.0%, the issuance of such Transition Bonds will provide tangible and quantifiable benefits to ratepayers, including greater rate reductions than would have been achieved absent the issuance of Transition Bonds and net present value savings over the term of the Transition Bonds. Petitioner has advised the BPU Staff that it will exercise its best efforts to achieve an effective weighted average yield on the Transition Bonds significantly less than 9.0%.

7. The methodology used, including an after-tax return of 8.42% as determined in Petitioner's most recent rate case, to calculate expected net present value savings as described in Appendix H hereof is reasonable.

8. A substantially level per kilowatt-hour charge will permit Petitioner to achieve appropriate rate reductions and will increase net present value savings to ratepayers over the life of the Transition Bonds when compared to a substantially level annual charge. The formula used to calculate the initial Transition Bond Charge and the periodic adjustments thereto as described in Exhibit A (Attachments A-2 and A-3) of the Petition as filed, as well as the modifications to illustrate the application of the provisions of Section2(e) in the event a hedging arrangement were to be entered into prior to pricing the Transition Bonds and interest rates and/or the Transition Bond spread were to subsequently decline, are reasonable and adherence thereto will provide assurance that Customers will pay the lowest Transition Bond Charges consistent with market conditions and the terms of this Financing Order, in compliance with Section 14(b)(4) of the Act. The standard for the Board to use in making periodic adjustments of the Transition Bond Charge final is the absence of a manifest error (i.e., an arithmetic error evident on the face of the filing) in the application of the Transition Bond Charge adjustment formula, which standard the Board finds consistent with Section 15 of the Act and the achievement of the lowest possible interest cost on the Transition Bonds. The estimate of the initial Transition Bond Charge, determined in accordance with either Appendix H or Appendix I, attached hereto, is reasonable. The request of the Servicer to make non-routine adjustments of the Transition Bond Charge formula as described in paragraph 2(g) of this Financing Order is reasonable.

Structuring and Pricing: Hedging Arrangements

9. The procedures established in this Financing Order relating to the final approval of the structuring and pricing of the Transition Bonds (including any hedging arrangements

priced at the time of the pricing of the Transition Bonds) assure that, in accordance with Section 14(b)(4) of the Act, Petitioner's customers pay the lowest Transition Bond Charges consistent with market conditions and the terms of this Financing Order. As authorized herein by the Board and in full satisfaction of the requirements of Sections 14(b)(4) and 15(a)(3) of the Act, the structuring and pricing of the Transition Bonds (including any such hedging arrangement) will be conclusively deemed to satisfy the requirements of Section 14(b)(4), and the terms and conditions of the Transition Bond financing shall be conclusively approved if so certified by the Designee upon the pricing of the Transition Bonds and any such hedging arrangement.

10. The procedures proposed by the Petitioner, as set forth in Section 2(e) hereof, for the execution of a hedging arrangement prior to the pricing of the Transition Bonds are reasonable and consistent with the Act.

11. The formation of the SPE by Petitioner, the capitalization of the SPE by Petitioner, the sale by Petitioner to the SPE of its Bondable Transition Property, the providing of overcollateralization as described herein and as approved in the Designee Certification, and the entering into a servicing agreement, an administration agreement, a sale agreement, other agreements and transactions by Petitioner and the SPE substantially as described in the Petition and the SEC Filing and the hedging arrangements as described herein and in Appendix E herein are reasonable and necessary.

12. The methodology for the remittance of Transition Bond Charges as described in Exhibit C of the Petition will satisfy the requirements of Section 14 of the Act and is a reasonable means of undertaking the remittance of these charges.

13. The conditions to the resignation or replacement of the Petitioner as Servicer as described in the Petition are reasonable.

14. The Transition Bond Charge and MTC-Tax billing, collection and remittance procedures imposed upon any TPS as set forth in the Petition are reasonable.

15. Capital Reduction Costs, which do not include interest or preferred dividends accrued prior to the date of the issuance of the Transition Bonds, and the Upfront Transaction Costs, not to exceed $125 million in the aggregate, are reasonable.

16. The recovery of Ongoing Transition Bond Costs, including recovery of amounts owed under any hedging arrangement, as previously described herein is reasonable and consistent with the Act.

17. The scheduled amortization upon issuance for the Transition Bonds being up to 15 years and the stated maturity of the Transition Bonds being up to two additional years following the scheduled amortization are reasonable and permitted under the Act.

18. The issuance of series and classes of Transition Bonds by the SPE in an aggregate principal amount not to exceed $2.525 billion is reasonable and consistent with the Act and the Restructuring Order. The Financial Advisor, has advised the Board that, in its opinion, the negotiated sale of the Transition Bonds should be expected to provide a lower cost of funds than a competitive sale. Therefore, the negotiation of the sale of the Transition Bonds with Lehman Brothers on behalf of a group of underwriters is reasonable and serves the public interest.

19. The True-Up Mechanism to obtain adjustments to the Transition Bond Charge and the MTC-Tax described hereinabove and set forth in Appendix I hereof is reasonable.

Use of Proceeds

20. Petitioner's proposed application of the proceeds of the Transition Bonds as described in Petitioner's Quarterly Report to the SEC on Form 10-Q for the Quarter Ended June 30, 1999 is reasonable and consistent with the Act.

Regulatory Compliance

21. In light of the specific provisions of the Act governing the Transition Bond Transaction, Petitioner's petition is found to comply with N.J.A.C. 14:1-5.6 and -5.9, to the extent either might be deemed applicable.

22. Petitioner's undertaking with respect to amortization of discount, if any, on the Transition Bonds complies with N.J.A.C. 14:1-5.9A.

Periodic Adjustment of the MTC-Tax

23. The MTC-Tax should be subject to mandatory periodic adjustment at the same time and in substantially the same manner as adjustments to the Transition Bond Charge; provided, however, the Petitioner makes reasonable efforts to utilize any and all deductions to taxable income for which it may be eligible with respect to the securitization transaction, now or in the future, whether or not such deductions are contained in the formula presented by Petitioner in its Petition, so that the MTC-Tax Component does not result in the over-recovery or underrecovery of taxes to the Petitioner. The Board further finds that if a final determination is made related to the amortization of Investment Tax Credits, as described on Pages 112, 113 and 125 of the Restructuring Order, or if the amounts received for overcollateralization are prospectively determined by the Internal Revenue Service ("IRS") to be deductible, such formula shall be modified by Petitioner to incorporate any such determination.

7. ORDERS

Based on the foregoing, the record of proceedings on the Petition (including the incorporation of discovery requests and responses thereto, as requested by Petitioner in its Reply to the Advocate's Memorandum), and the provisions of the Act and the Restructuring Order, the Board HEREBY ORDERS:

1. The Petition for this Financing Order pursuant to Section 14 of the Act is approved subject to the terms and conditions stated herein.

2. In addition to Petitioner's Bondable Stranded Costs approved in part by the Board in the Restructuring Order, the Board hereby authorizes recovery of restructuring related costs consisting of: (1) the Capital Reduction Costs, (2) the Upfront Transaction Costs and (3) the Ongoing Transition Bond Costs, and hereby approves the formula for the calculation and adjustment of the Transition Bond Charge and the MTC-Tax Component in accordance with the Board's Findings herein.

Bondable Transition Property and Transition Bond Charges

3. The issuance of Transition Bonds by the SPE up to a maximum of $2.525 billion and the sale by the Petitioner of the Bondable Transition Property to the SPE are authorized.

4. The Transition Bond Charges will be assessed against all existing and future electric customers of Petitioner or any successor within the service area of Petitioner at the date of the Petition, except as provided in Section 28 of the Act, and will apply equally to each customer of Petitioner, regardless of class, based on the amount of electricity delivered to the customer (whether purchased from the Petitioner or a TPS) through the transmission and distribution system of Petitioner or any successor electric public utility who may take over all or a portion of the Petitioner's service area.

5. Transition Bond Charges will be set at a level sufficient to recover the Total Payment Requirements. The Transition Bond Charge and the MTC-Tax will remain in effect until the SPE, as owner of the Bondable Transition Property, has received Transition Bond Charges sufficient to recover the Total Payment Requirements and the MTC-Tax Component.

6. Pursuant to the Act, there is created and established for the benefit of Petitioner (or any assignee in accordance herewith) Bondable Transition Property consisting of the irrevocable right to charge, collect and receive, and be paid from collections of, the Transition Bond Charges in the amount necessary to meet the Total Payment Requirements, all rights of Petitioner to the Bondable Transition Property under this Order with respect to the Transition Bond Charges including without limitation all rights to obtain periodic adjustments of the Transition Bond Charges pursuant to Section 15 of the Act, and all revenues, collections, payments, money and proceeds arising under, or with respect to, all of the foregoing.

7. Pursuant to Section 16 of the Act, neither the Board nor any other governmental entity will have the authority, directly or indirectly, legally or equitably, to rescind, alter, repeal, modify or amend this Financing Order, to revalue, re-evaluate or revise the amount of Bondable Stranded Costs, to determine that the Transition Bond Charges or the revenues required to recover Bondable Stranded Costs are unjust or unreasonable, or in any way to reduce or impair the value of the Bondable Transition Property, nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement or termination, provided, however, that nothing in this Financing Order will preclude adjustments of the Transition Bond Charges or the MTC-Tax in accordance with the provisions hereof and of Section 15 of the Act.

8. Pursuant to Section 16 of the Act, and notwithstanding any other provision of law, this Financing Order and the Transition Bond Charges authorized herein will become irrevocable upon the issuance of this Financing Order and its becoming effective pursuant to Section 19 of the Act. This Financing Order, the Transition Bond Charges and the Bondable Transition Property will constitute a vested, presently existing property right upon the transfer to an

assignee and receipt of consideration for such Bondable Transition Property.

9. Pursuant to Section 15 of the Act, until the Total Payment Requirements have been fully satisfied, this Financing Order and the authority to meter, charge, collect and receive the Transition Bond Charges and the MTC-Tax will remain in effect and Petitioner shall be obligated to provide electricity to its customers and will have the right to meter, charge, collect and receive the Transition Bond Charges, which rights and obligations may be assignable solely within the discretion of Petitioner.

Sale, Pledge and Assignment Of Transition Property

10. In accordance with the Act and as described in the Petition, Petitioner is authorized to sell, pledge or assign any or all of its interest in Bondable Transition Property that arises from this Financing Order directly, or indirectly through an assignee, to the SPE. The SPE is authorized to acquire the Bondable Transition Property and is approved and designated as a "financing entity" (as defined in Section 3 of the Act) for such purpose, and for the purpose of issuing Transition Bonds and pledging the Bondable Transition Property to the payment of the Transition Bonds.

11. The SPE will pay the purchase price of the Bondable Transition Property equal to the net proceeds from the issuance of the Transition Bonds directly or indirectly to Petitioner, to be applied substantially as described in the Petitioner's Second Quarter 10-Q dated August 16, 1999 and as set forth in ordering paragraph 36 of this Financing Order.

12. Upon the sale by Petitioner of the Bondable Transition Property to the SPE as described in this Financing Order, the SPE will have all of the rights originally held by Petitioner with respect to the Bondable Transition Property, including, without limitation, the right to exercise any and all rights and remedies, including the right to direct the Petitioner or any successor electric public utility to shut-off electric power to the extent permitted by law and any applicable

regulations, and to assess and collect any amounts payable by any customer in respect of such Bondable Transition Property, notwithstanding any objection or direction to the contrary by the Servicer.

13. Upon the sale by Petitioner of Bondable Transition Property to the SPE, Petitioner or any successor Servicer will not be entitled to recover the Transition Bond Charges other than for the benefit of the holders of Transition Bonds in accordance with Petitioner's duties as Servicer of such Bondable Transition Property as authorized in this Financing Order.

Transition Bonds

14. The scheduled amortization upon issuance of the Transition Bonds will be up to 15 years, and the stated maturity will be up to two additional years. The Transition Bonds may be issued in series and classes with different terms. Debt service on the Transition Bonds shall be scheduled upon issuance so that the sum, for each annual period, of (i) the Periodic Payment Requirements and (ii) the associated MTC-Tax will result in a substantially equal per kilowatt hour (kwh) charge. One or more classes of Transition Bonds may be issued as variable rate instruments, the interest on which is fixed or hedged in accordance with the terms of a hedging arrangement consistent with this Financing Order. In addition, Petitioner may, at any time after the issuance of this Financing Order, request that the Designee authorize a hedging arrangement as described in paragraph 2(e) herein to reduce interest rate risk.

15. The amount of Transition Bonds to be issued (not to exceed $2.525 billion) is approved as described herein. The final structure, pricing, terms and conditions of the Transition Bonds (including any hedging arrangement described in paragraph 2(e)) will, to the extent consistent with the provisions of this Financing Order, be determined by Petitioner and approved by the Board or its Designee pursuant to his delegation of authority from the Board, pursuant to

Sections 14(b)(4) and 15(a)(3) of the Act, at the time Transition Bonds are priced and/or any such hedging arrangement is entered into. The Designee may rely conclusively on the finding of the tangible and quantifiable benefits of securitization in Section 6 of Paragraph 6 hereof, as required by Section 14(b)(3) of the Act, upon the advice of the Board's Financial Advisor and upon information provided to the Designee by Petitioner to support any Designee Certification. Any Designee Certification shall be substantially in the Form of Appendix A hereto, shall constitute a part of this Financing Order, shall constitute a full and complete record of the determinations and approvals made therein and full satisfaction of the requirements of Sections 14(b)(4) and 15(a)(3) of the Act, and shall be final and uncontestable as of its date.

16. The issuance and sale of the Transition Bonds through negotiation with underwriters is approved.

Recovery of Bondable Stranded Costs

17. In accordance with Section 20 of the Act, Transition Bonds will be recourse only to the credit and assets of the SPE. Investment income earned on the trust accounts held by the Bond Trustee may be used to satisfy current scheduled interest and principal payments on the Transition Bonds and related expenses and to replenish the SPE's equity and the scheduled overcollateralization amount. Investment income in the capital account not used currently for this purpose will be released to the SPE. Any earnings in excess of amounts required to be held in such trust accounts (other than the capital account) will reduce the Transition Bond Charge annually through the True-up Mechanism.

18. The Capital Reduction Costs and Upfront Transaction Costs (including hedging costs permitted to be securitized as described in Section 2(e) hereof) up to $125 million in the aggregate are authorized to be recovered through the issuance of Transition Bonds.

19. The Ongoing Transition Bond Costs, including recovery of amounts owed under any hedging arrangement which are not securitized, as described herein are authorized to be recovered through the Transition Bond Charge. Provided, however, that the amounts owed to the Petitioner by the SPE under any hedging arrangements shall bear interest at the weighted average yield on the Transition Bonds and shall amortize on a pro rata basis with the amount of the Transition Bonds.

Reports

20. The Designee will make his determinations and approvals of the pricing of the Transition Bonds and/or any hedging arrangement described in paragraph 2(e) herein, upon receipt from the Petitioner of the Pricing Advice Certficate(s) substantially in the form of Appendix D hereto. Within two business days after the pricing of the Transition Bonds, the Designee shall file with the Secretary of the Board a Designee Certification(s) substantially in the form of Appendix A hereto. As provided in ordering paragraph 15 of this Financing Order, any Designee Certification will be final and uncontestable as of its date and will represent final approval, pursuant to Sections 14(b)(4) and 15(a)(3) of the Act, of the structure, pricing, terms and conditions of the Transition Bonds and/or any such hedging arrangement. No delay or error in such filing will affect the validity of this Financing Order, the Bondable Transition Property or the Transition Bonds.

21. Pursuant to Section 15 of the Act, not later than five business days after issuance and sale of the Transition Bonds, Petitioner will notify the Secretary of the Board, in an Issuance Advice Letter substantially in the form of Appendix B hereto, of the initial Transition Bond Charge and MTC-Tax (which are hereby approved), the expected amortization schedule approved in the Designee Certification and related matters. The Issuance Advice Letter will be automatically effective upon filing with the Secretary of the Board. No delay or error in such filing will affect the validity of this

Financing Order, the Bondable Transition Property or the Transition Bonds. Upon the filing of the Issuance Advice Letter, Petitioner will implement the rate reduction determined using the methodology set forth in Appendix H (Attachment 2), as required by Section 4(i) of the Act.

Servicing of Transition Bonds

22. Petitioner, as Servicer, is authorized, to enter into a servicing agreement, substantially as described in the SEC Filing, with the SPE pursuant to which Petitioner agrees to continue to operate its distribution system to provide service to its customers, to impose, charge, collect and receive Transition Bond Charges with respect to Bondable Transition Property for the benefit and account of such SPE or its assigns, and to account for and remit these amounts to or for the account of such SPE or its assigns in the manner described in Exhibit C of the Petition.

23. Each customer's bill will contain in text or in a footnote that a portion of the monthly charge represents Bondable Transition Property being collected on behalf of the SPE as owner of the Bondable Transition Property.

24. Collections from each customer will be applied first to sales taxes (which Petitioner will collect as trustee for the State and not for its own account or that of the SPE, and which are not "charges" for purposes of the following allocations), then to charges in arrears, if any, and then to current charges. With respect to each billing period, partial payments of charges will be deemed to constitute the Transition Bond Charge, the MTC-Tax and the Petitioner's other charges, pro rata, based on the proportions that the Transition Bond Charge, the MTC-Tax and the Petitioner's other charges bear to the total of such charges. Partial payments of Transition Bond Charges will be allocated to the owners of Bondable Transition Property, pro rata, based on the proportions that the Transition Bond Charge representing the Bondable Transition Property and any transition bond

charges established pursuant to other subsequent financing orders bear to the total transition bond charges.

25. Pursuant to Section 22 of the Act, in the event of a default by a Servicer under any Servicing Agreement with respect to Transition Bonds, upon application of the SPE or the Bond Trustee, the Board will designate a successor Servicer for the Bondable Transition Property, who will promptly assume billing and collection responsibilities for Transition Bond Charges and the MTC-Tax. The Board will act on an expedited basis to designate within 30 days such successor Servicer. Such successor Servicer will assume all rights and obligations of the initial Servicer.

26. The Board will only permit any successor Servicer to replace Petitioner as Servicer in any of its servicing functions with respect to the Transition Bond Charges and the Bondable Transition Property authorized by this Financing Order upon determining that approving or requiring such successor Servicer will not cause the then current credit ratings on Transition Bonds to be withdrawn or downgraded.

27. Any TPS that proposes to collect Transition Bond Charges or the MTC-Tax must (i) meet the creditworthiness criteria to be established by the Board, and at a minimum, the criteria set forth and approved below in this Financing Order; and (ii) comply with the billing, collection and remittance procedures and information access requirements set forth below.

28. The Board will only authorize a TPS to bill and collect the Transition Bond Charge or the MTC-Tax for remittance to the Servicer or the Petitioner respectively, if (i) such TPS agrees to remit the full amount of all charges it bills to customers for services provided by the Petitioner or any successor electric public utility, together with Transition Bond Charges and the MTC-Tax, regardless of whether payments are received from such customers, within 15 days of Petitioner's or the Servicer's bill for such charges, (ii) such TPS will provide the Servicer with total monthly kwh usage

information for each customer in a timely manner for the Servicer to fulfill its obligations, as such information is the basis of such remittance, and (iii) the Servicer will be entitled, within seven days after a default by the TPS in remitting any charges payable to the Petitioner, together with Transition Bond Charges and the MTC-Tax, to assume responsibility for billing all charges for services provided by Petitioner or any successor electric public utility, including the Transition Bond Charges and the MTC-Tax, or to transfer responsibility to a qualifying third party. In addition, if and so long as such TPS does not maintain at least a 'BBB' (or the equivalent) long term unsecured credit rating from Moody's Investors Service or Standard & Poor's Rating Services, such TPS shall maintain, with the Servicer or as directed by the Servicer, a cash deposit or comparable security equal to two months' maximum estimated collections of all charges payable to the Servicer, including the Transaction Bond Charges and the MTC-Tax, as reasonably estimated by Petitioner (or any such successor electric public utility or by the Servicer). In the event of a default in the remittance of any such charges by a TPS, any shortfall in Transition Bond Charge or MTC-Tax collections will be included in the periodic adjustment of the Transition Bond Charge and the MTC-Tax as described herein.

29. Customers will continue to be responsible for payment to the Servicer of the Transition Bond Charge and the MTC-Tax billed by a TPS, to the extent such customer has not paid Transition Bond Charges or MTC-Tax billed to it. In the event of a failure of any customer to pay the Transition Bond Charge or MTC-Tax, the Petitioner is authorized to shut-off power, or a successor Servicer is authorized to direct the electric public utility to shut-off power, to such customer in accordance with law.

30. The Servicer will be entitled to an annual servicing fee equal to .05% of the initial balance of the Transition Bonds (the "Servicing Fee"). The Board approves the Servicing Fee as described herein. The Board also approves a

higher annual Servicing Fee of any successor Servicer of up to 1.25% of the initial principal balance of the Transition Bonds.

The Transition Bond Charge: Establishment and Adjustment

31. The formula used to calculate the Transition Bond Charge and to periodically adjust the Transition Bond Charge, as described in Appendix I hereof, is approved.

32. Pursuant to Section 15 of the Act the initial Transition Bond Charge and MTC-Tax will be filed with the Secretary of the Board in the Issuance Advice Letter and will be effective upon such filing, to be adjusted up or down, as necessary, by the True-Up Mechanism.

33. In accordance with Section 15 of the Act, the Servicer, on behalf of Petitioner and the pledgees or transferees of the Bondable Transition Property, is authorized to file with the Secretary of the Board periodic formula-based Transition Bond Charge adjustments, at least annually but not more frequently than quarterly, to the extent necessary to ensure the full and timely recovery of an amount equal to the Periodic Payment Requirements. Each such adjustment shall be formula-based, shall be in the amount required to ensure receipt of revenues sufficient to provide for the full and timely recovery of Bondable Stranded Costs, including, without limitation, the timely payment of principal of, and interest and acquisition or redemption premium on, the Transition Bonds issued to finance such Bondable Stranded Costs. The periodic adjustments will be filed in substantially the form attached to this Financing Order as Appendix C.

34. Each periodic adjustment of the Transition Bond Charges will become effective 30 days after filing with the Secretary of the Board, absent a determination by the Board of manifest error (i.e., an arithmetic error evident on the face of the filing) in the application of the formula approved herein. Petitioner will propose such adjustments in a filing with the Secretary of the Board at least 30 days in advance of

the date upon which it is requested to be effective. The proposed adjustment will become effective on an interim basis on such date and, in the absence of a Board order to the contrary correcting such manifest error, will become final 60 days after the filing.

35. If necessary to ensure the timely recovery of the Periodic Payment Requirements and the MTC-Tax, the Board will approve adjustments to the methodology as proposed by Petitioner in "non-routine" true-up filings as discussed hereinabove.

Use Of Transition Bond Proceeds

36. Petitioner will use the proceeds of the Transition Bonds, net of transaction costs and any costs of credit enhancement for the Transition Bonds paid from the proceeds, to reduce its Bondable Stranded Costs through the retirement of Petitioner's debt or equity, or both (including transactions completed after the date of this Order.). Petitioner is authorized to apply the proceeds to retire debt, equity or both, substantially as set forth in Petitioner's Second Quarter 10-Q filed with the SEC, and to pay any accrued interest and accrued preferred dividends from the date of issuance of the Transition Bonds to the date of retirement, and to pay any premium, unamortized discounts and other fees, costs and charges associated with such retirement. No failure to apply the proceeds in accordance with the Restructuring Order or this Financing Order shall affect the sale of the Bondable Transition Property or the right to collect the Transition Bond Charges.

Approval of Servicing Agreement, Administration Agreement, Sale Agreement, Hedging Arrangement, if any, and Other Agreements and Transactions

37. Petitioner's entering into a servicing agreement, an administration agreement, a sale agreement, any hedging arrangement and other Transition Bond Transaction documents with the SPE consistent with the terms of this Order and/or substantially as described in the SEC Filing and

such other related transaction documents and other dealings between Petitioner and the SPE as contemplated therein and herein are authorized.

Accounting for Certain Benefits

38. Pursuant to Section 15 of the Act, any amount of the Transition Bond Charges held by the Bond Trustee in excess of those amounts necessary to fully recover the Periodic Payment Requirements will be applied as a credit to reduce Transition Bond Charges through the True-Up mechanism, as described in the Petition, except that if more than one issue of Transition Bonds is sold, all such requirements with respect to such Transition Bonds will be aggregated for purposes of determining whether or not the total transition bond charges collected exceed the total of such requirements for all such Transition Bonds.

39. Upon retirement of all outstanding Transition Bonds and any related Ongoing Transition Bond Costs, any remaining amounts held by the Bond Trustee will be released to the SPE. Petitioner's equity in the SPE may be distributed to Petitioner. Petitioner will credit an amount equal to any remaining Transition Bond Charges, less any amount of any unpaid MTC-Tax charges and any amount that was withdrawn and not replenished to the SPE's equity, to its electric customers against its distribution charges. Any overcollected MTC-Tax charges shall also be credited to Petitioner's electric customers against Petitioner's distribution charges.

40. Not more than nine months following issuance of the Transition Bonds, the Petitioner will file with the Board a reconciliation statement for Upfront Transaction Costs and Capital Reduction Costs. If the sum of Upfront Transaction Costs and Capital Reduction Costs exceeds $125 million, such excess shall be eligible for recovery in a subsequent proceeding. If the sum of Upfront Transaction Costs (plus any hedging costs associated with any hedging arrangements entered into prior to the pricing of Transition Bonds) and

Capital Reduction Costs is less than $125 million, such difference shall be credited against the Petitioner's Societal Benefits Charge to the benefit of ratepayers. Prior to being expended for their intended purpose, earnings on proceeds from the Transition Bonds issued to pay transaction costs (Capital Reduction and Upfront Transaction Costs (plus any hedging costs associated with any hedging arrangements entered into prior to the pricing of Transition Bonds)) shall be credited to the beginning balance of deferred costs associated with Petitioner's Societal Benefits Charge, and bear interest at the rate applicable to such balance as set forth in Ordering Paragraph 6 on page 116 of the Restructuring Order. The failure to file such statement or any delay in filing the same or making such credits shall not affect the validity of this Financing Order, the Bondable Transition Property or the Transition Bonds.

Records

41. Pursuant to Section 21 of the Act the Petitioner or another Servicer on its behalf Will maintain or cause to be maintained records of Transition Bond Charges and associated MTC-Tax collections which have been assessed and collected by Petitioner, as Servicer, under this Financing Order and the Restructuring Order respectively. Such records, and any records of a financing entity, will be made available by Petitioner for inspection and examination within a reasonable time upon demand therefor by the Board or the related financing entity.

MTC- Tax Adjustments

42. Pursuant to the Restructuring Order and this Order, Petitioner is authorized to file with the Board proposals for mandatory periodic adjustments of the MTC-Tax authorized by the Board in the Restructuring Order. Such adjustments shall be formula-based and shall initially be based on the formula attached hereto as Appendix I and is hereby approved. Such adjustments shall be made substantially in the same manner and at the same time as the True-Up

Mechanism for the Transition Bond Charges in order to insure receipt of revenues sufficient to recover the MTC-Tax Component. Unless the Petitioner or the Board proposes an adjustment to the formula used to calculate the MTC-Tax, any proposed adjustment to the MTC-Tax will become effective 30 days after filing absent manifest error and, in the absence of a Board Order to the contrary, will become final 60 days after filing. The initial amount of the MTC-Tax will be filed with the Board as part of the Issuance Advice Letter and become effective upon such filing in the same manner and at the same time as the related initial Transition Bond Charge. The periodic adjustments will be filed in substantially the form attached to this Financing Order as Appendix C.

43. It is the express intention of the Board that the Petitioner shall not overrecover or underrecover the MTC-Tax Component. Accordingly, Petitioner shall adjust the formula used to calculate the MTC-Tax to reflect changes in federal income tax or State corporate business tax rates and any other changes to the application or interpretation of such laws, provided such changes are either "generic" (affect all taxpayers such as a prospective change in the tax rate) or are securitization-related. The latter changes would, for example, include the amortization of Investment Tax Credits, as described on pages 112, 113 and 125 of the Restructuring Order, or the deductibility of the amounts received for overcollateralization in the event that such payments are prospectively determined by the IRS to not constitute taxable income as a result of an IRS letter or other ruling to that effect.

Any proposed adjustment to the formula by the Petitioner shall be submitted to the Secretary of the Board no less than 60 days prior to its proposed effective date and shall become effective on the proposed effective date absent a Board Order to the contrary; provided, however, that the existing formula shall remain effective in the interim.

44. As provided in Section 23(a)(4) of the Act, Petitioner's right to recover the MTC-Tax Component will in

no way affect or impair the legal true sale and absolute transfer of the Bondable Transition Property to the SPE, or otherwise affect the legal rights and attributes of the Bondable Transition Property under the Act or under this Financing Order.

Miscellaneous

45. Pursuant to Section 19 of the Act this Financing Order will be effective only in accordance with the terms hereof and upon the written consent of Petitioner to all such terms.

46. In pricing the Transition Bonds, and in determining whether it may be advantageous to enter into a hedging arrangement prior to the pricing of the Transition Bonds pursuant to Section 2(e), Petitioner will apply both the methodology on which Appendix H is based (securitizing Transaction Costs as approved herein pre-tax and reflecting the related tax deductions in the initial-year of the MTC-Tax calculation) and that on which Appendix I is based (securitizing Transaction Costs as approved herein on a net-of-tax basis and not reflecting the tax-related tax deductions in the initial year of the MTC-Tax calculation), and base the pricing and hedging determination on the method that results in the lowest total Transition Bond and MTC-Tax Charges, calculated as shown in Attachment A-I of either Appendix H or I.

47. Pursuant to Section 25 of the Act, the consideration or approval by the Board of a petition by Petitioner under the Act, including this Financing Order and the periodic adjustment provided in Section 15 of the Act, will be wholly separate from, and will not be utilized in the Board's consideration of, any other ratemaking or other proceeding involving Petitioner, except as otherwise provided in Sections 39 and 40 hereof and in the Act.

This Financing Order is issued subject to the following provisions, failure of compliance with which shall not affect the rights of the holders of the Transition Bonds:

(1) Petitioner will furnish the Secretary of the Board with copies of all documents as executed and filed with other regulatory agencies relating to the Transition Bonds.

(2) Petitioner will quarterly file with this Board a statement setting forth details with respect to the disbursement of net proceeds of the Transition Bonds and their use in retiring debt or equity or both.

(3) This Financing Order will not be construed as a certification that the Transition Bonds will be secured by tangible or intangible assets of commensurate value or investment costs.

(4) The Petitioner is directed to file, as part of its required Unbundling Filing of August 1, 2002, data showing the impact of the timing of customer payments of transition bond charges to Petitioner versus payments by Petitioner, as Servicer, to the transition bond trustee. This data shall include a calculation of customer daily remittances, timing of remittances to the bond trustee and the short-term interest rate then applicable to determine the amount of "float" income earned by Petitioner in its capacity as Servicer. If the Board determines in its review of this filing, that Petitioner retained revenue over and above its servicing fee, it may calculate such retained revenue, and impute interest thereon, in determining fair and reasonable rates going forward from the date of its review.

(5) The Board hereby designates Herbert H. Tate, President, or in his absence any other Commissioner, as its Designee under this Financing Order. Such Designee shall act only in accordance with the Designee Guidelines approved herein and attached hereto as Appendix E.

DATED: September 17, 1999

BOARD OF PUBLIC UTILITIES
BY:

/s/_____
HERBERT H. TATE
PRESIDENT

_____
CARMEN J. ARMENTI
COMMISSIONER

/s/_____
FREDERICK F. BUTLER
COMMISSIONER

ATTEST: /s/_____
MARK W. MUSSER
SECRETARY

CONSENT OF PETITIONER

Pursuant to Section 19 of the Act, Petitioner hereby consents to all of the terms of this Bondable Stranded Consent Order, this 17th day of September, 1999.

PUBLIC SERVICE ELECTRIC
AND GAS COMPANY
BY:

/s/_____
ALFRED C. KOEPPE
SENIOR VICE PRESIDENT